
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Section 667-5, 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2 repealed.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~~



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

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

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

19 SECTION 2. Section 667-5.5, Hawaii Revised Statutes, is
20 repealed.

21 ~~["§667-5.5 Foreclosure notice. Notwithstanding any law or~~
22 ~~agreement to the contrary, any person who forecloses on a~~



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

18 SECTION 3. Section 667-5.7, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§667-5.7] Public sale. At any public sale pursuant to~~
21 ~~section 667-5, the successful bidder at the public sale, as the~~
22 ~~purchaser, shall not be required to make a downpayment to the~~



1 ~~foreclosing mortgagee of more than ten per cent of the highest~~
2 ~~successful bid price."]~~

3 SECTION 4. Section 667-6, Hawaii Revised Statutes, is
4 repealed.

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



1 ~~request shall thereafter give notice to all mortgage creditors~~
2 ~~who have timely submitted their request. The notice shall be~~
3 ~~sent by mail or otherwise communicated to the mortgage~~
4 ~~creditors, not less than seven calendar days prior to the date~~
5 ~~of sale.~~

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

13 SECTION 5. Section 667-7, Hawaii Revised Statutes, is
14 repealed.

15 [~~§667-7 Notice, contents, affidavit. (a) The notice of~~
16 ~~intention of foreclosure shall contain:~~

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



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

4 SECTION 6. Section 667-8, Hawaii Revised Statutes, is
5 repealed.

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

14 SECTION 7. Section 667-9, Hawaii Revised Statutes, is
15 repealed.

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



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

3 [~~"§667-10—Power unaffected by transfer, surplus after
4 sale. No sale or transfer by the mortgagor shall impair or
5 annul any right or power of attorney given in the mortgage to
6 the mortgagee to sell or transfer the mortgaged property, as
7 attorney or agent of the mortgagor, except as otherwise provided
8 by chapters 501 and 502. When public sale is made of the
9 mortgaged property under this chapter, the remainder of the
10 proceeds, if any, shall be paid over to the owner of the
11 mortgaged property, after deducting the amount of claim and all
12 expenses attending the same."~~]

13 SECTION 9. Chapter 667, part II, Hawaii Revised Statutes,
14 is repealed.

15 SECTION 10. This Act does not affect rights and duties
16 that matured, penalties that were incurred, and proceedings that
17 were begun before its effective date.

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken.

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

21

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Report Title:

Mortgage Foreclosures

Description:

Repeals laws authorizing and providing for nonjudicial foreclosure processes.

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

