

JAN 26 2011

A BILL FOR AN ACT

RELATING TO NONJUDICIAL FORECLOSURE.

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

- 1 SECTION 1. Section 501-241, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
- 3 "(b) Without limiting the generality of subsection (a),
4 the following instruments need not be registered pursuant to
5 this chapter to be effective and shall be recorded in the bureau
6 of conveyances pursuant to chapter 502:
- 7 (1) An assignment or other instrument transferring a
8 leasehold time share interest;
- 9 (2) A mortgage or other instrument granting a lien on a
10 leasehold time share interest;
- 11 (3) An agreement of sale for the sale of a leasehold time
12 share interest [~~. Any such agreement of sale~~], which
13 shall be subject to section 502-85 and shall not be
14 subject to section 501-101.5;
- 15 (4) A lien or notice of lien pertaining to a leasehold
16 time share interest in favor of a time share owners
17 association, an association of owners under chapter
18 514A or 514B, or a similar homeowner's association;



- 1 (5) A judgment, decree, order of court, attachment, writ,
2 or other process against a leasehold time share
3 interest;
- 4 (6) A mechanic's or materialman's lien or other lien upon
5 a leasehold time share interest;
- 6 (7) A lis pendens or notice of pendency of action, notice,
7 affidavit, demand, certificate, execution, copy of
8 execution, officer's return, or other instrument
9 relating to a leasehold time share interest and
10 otherwise required or permitted to be recorded or
11 registered in connection with the enforcement or
12 foreclosure of any lien, whether by way of power of
13 sale [~~pursuant to section 667-57,~~] or otherwise;
- 14 (8) A power of attorney given by the owner of a leasehold
15 time share interest [~~or~~], by the vendor or vendee
16 under an agreement of sale for the sale of a leasehold
17 time share interest, by a mortgagee or other lienor
18 having a mortgage or lien upon a leasehold time share
19 interest, or by another party holding a claim or
20 encumbrance against or an interest in a leasehold time
21 share interest; or



1 (9) An instrument assigning, extending, continuing,
2 dissolving, discharging, releasing in whole or in
3 part, reducing, canceling, extinguishing, or otherwise
4 modifying or amending any of the foregoing
5 instruments."

6 SECTION 2. Section 501-263, Hawaii Revised Statutes, is
7 amended to read as follows:

8 " ~~[§]~~501-263 ~~[§]~~ **Effect of deregistration in specific**
9 **cases.** Notwithstanding section 501-262(a)(3), the following
10 documents, instruments, and papers need not be registered
11 pursuant to this chapter to be effective and shall be recorded
12 in the bureau of conveyances pursuant to chapter 502:

13 (1) Any document, instrument, or paper assigning,
14 extending, continuing, dissolving, discharging,
15 releasing in whole or in part, reducing, canceling,
16 extinguishing, or otherwise modifying or amending any
17 of the following documents, instruments, or papers
18 that have been registered pursuant to this chapter and
19 that pertain to deregistered land:

- 20 (A) A mortgage;
- 21 (B) An agreement of sale for the sale of a fee time
22 share interest or interest in other deregistered



1 land[. ~~After the recordation of the certificate~~
2 ~~of title, any agreement of sale shall~~], which
3 shall, after the recordation of the certificate
4 of title, be subject to section 502-85 and shall
5 not be subject to section 501-101.5;

6 (C) A correction deed, correction mortgage, or other
7 document, instrument, or paper correcting a
8 document, instrument, or paper registered
9 pursuant to this chapter;

10 (D) A lien or claim of lien on a fee time share
11 interest held or claimed by a time share owners
12 association, an association of apartment owners,
13 or other homeowners' association or a lien or
14 claim on an interest in other deregistered land
15 held by a lienor or person claiming a lien;

16 (E) A lease that demises a fee time share interest or
17 interest in other deregistered land;

18 (F) An order of court, attachment, writ, or other
19 process against a fee time share interest or
20 interest in other deregistered land;



1 (G) A mechanic's or materialman's lien or other lien
2 upon a fee time share interest or interest in
3 other deregistered land;

4 (H) A lis pendens or notice of pendency of action,
5 notice, affidavit, demand, certificate,
6 execution, copy of execution, officer's return,
7 or other instrument relating to a fee time share
8 interest or interest in other deregistered land
9 and otherwise required or permitted to be
10 recorded or registered in connection with the
11 enforcement or foreclosure of any lien, whether
12 by way of power of sale [~~pursuant to a power of~~
13 ~~sale under section 667-5,~~] or otherwise; or

14 (I) A power of attorney given by the owner of a fee
15 time share interest or interest in other
16 deregistered land [~~or~~], by the vendor or vendee
17 under an agreement of sale for the sale of a fee
18 time share interest or interest in other
19 deregistered land, by a mortgagee or other lienor
20 having a mortgage or lien upon a fee time share
21 interest or interest in other deregistered land,
22 or by another party holding a claim or



1 encumbrance against or an interest in a fee time
2 share interest or interest in other deregistered
3 land;

4 (2) A lis pendens or notice of pendency of action, notice,
5 affidavit, demand, certificate, execution, copy of
6 execution, officer's return, or other instrument
7 relating to a fee time share interest or interest in
8 other deregistered land and otherwise required or
9 permitted to be recorded or registered in connection
10 with the enforcement or foreclosure of any lien,
11 whether by way of power of sale [~~pursuant to a power~~
12 of sale under section 667-5,] or otherwise; and

13 (3) Any declaration annexing property to, any declaration
14 deannexing property from, any amendment or supplement
15 to, correction of, or release or termination of, any
16 of the following documents, instruments, or papers
17 that have been registered pursuant to this chapter and
18 that pertain to deregistered land:

19 (A) A declaration of covenants, conditions,
20 restrictions, or similar instrument, by whatever
21 name denominated, establishing or governing a
22 time share plan, or the bylaws of a time share



1 owners association, notice of time share plan, or
2 other time share instrument;

3 (B) A declaration of condominium property regime or
4 similar declaration by whatever name denominated,
5 the bylaws of the association of apartment
6 owners, the condominium map, any declaration of
7 merger and any instrument effecting a merger;
8 provided that if only some of the condominium
9 apartments are included in the time share plan,
10 then it shall be necessary to register, and to
11 note on the certificate of title for any
12 apartment not included in the time share plan:

13 (i) Any declaration annexing property to the
14 condominium property regime;

15 (ii) Any declaration deannexing property from the
16 condominium property regime;

17 (iii) Any instrument effecting a merger of two or
18 more condominium projects or two or more
19 phases of a condominium project; and

20 (iv) Any document, instrument, or paper amending,
21 supplementing, correcting, releasing, or
22 terminating any of the documents listed in



1 subparagraph (B) (i) through (iii), the
2 declaration of condominium property regime,
3 the bylaws of the association of apartment
4 owners, the condominium map, or any
5 declaration of merger; and
6 (C) A declaration of covenants, conditions,
7 restrictions, or similar instrument, by whatever
8 name denominated, the bylaws of any homeowners
9 association, any declaration of annexation or
10 deannexation, any amendments and supplements
11 thereto, and any cancellation or extinguishment
12 thereof, any declaration of merger and any
13 instrument effecting a merger; provided that if
14 only some of the parcels of land covered by the
15 declaration constitutes deregistered land, and if
16 one or more of the remaining parcels constitute
17 registered land, then it shall be necessary to
18 register, and to note on the certificate of title
19 for any registered land:
20 (i) Any declaration annexing property to the
21 declaration;



- 1 (ii) Any declaration deannexing property from the
- 2 operation of the declaration; and
- 3 (iii) Any document, instrument, or paper amending,
- 4 supplementing, correcting, releasing, or
- 5 terminating any of the documents listed in
- 6 subparagraph (C) (i) or (ii), the declaration
- 7 of covenants, conditions, restrictions, or
- 8 the bylaws of the homeowners association."

9 SECTION 3. Section 514A-90, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (b) to read:

12 "(b) Except as provided in subsection (g), when the
13 mortgagee of a mortgage of record or other purchaser of an
14 apartment obtains title to the apartment as a result of
15 foreclosure of the mortgage, the acquirer of title and the
16 acquirer's successors and assigns shall not be liable for the
17 share of the common expenses or assessments by the association of
18 apartment owners chargeable to the apartment which became due
19 prior to the acquisition of title to the apartment by the
20 acquirer. The unpaid share of common expenses or assessments
21 shall be deemed to be common expenses collectible from all of the
22 apartment owners, including the acquirer and the acquirer's



1 successors and assigns. The mortgagee of record or other
2 purchaser of the apartment shall be deemed to acquire title and
3 shall be required to pay the apartment's share of common expenses
4 and assessments beginning[+] at the earliest of:

5 (1) Thirty-six days after the order confirming the sale to
6 the purchaser has been filed with the court;

7 (2) Sixty days after the hearing at which the court grants
8 the motion to confirm the sale to the purchaser;

9 (3) Thirty days after the public sale in a nonjudicial
10 power of sale foreclosure [~~pursuant to section 667-5~~];
11 or

12 (4) Upon the recording of the instrument of conveyance[~~7~~];
13 [~~whichever occurs first,~~] provided that the mortgagee of record

14 or other purchaser of the apartment shall not be deemed to

15 acquire title under paragraph (1), (2), or (3) [~~7~~] if transfer of
16 title is delayed past the [~~thirty six days specified in~~

17 ~~paragraph (1), the sixty days specified in paragraph (2), or the~~
18 ~~thirty days specified in paragraph (3), when a person who~~

19 ~~appears at the hearing on the motion or a party to the~~

20 ~~foreclosure action requests] relevant time period due to a~~

21 request for reconsideration of the motion or order to confirm

22 sale, [~~objects~~] objection to the form of the proposed order to



1 confirm sale, [~~appeals~~] or appeal of the decision of the court
2 to grant the motion to confirm sale[~~7~~] by a party to a
3 foreclosure action; or the [debtor or mortgagor declares
4 bankruptcy or is involuntarily placed into bankruptcy.]
5 declaration of or involuntary placement into bankruptcy of a
6 debtor or mortgagor. In any such case, the mortgagee of record
7 or other purchaser of the apartment shall be deemed to acquire
8 title upon recordation of the instrument of conveyance."

9 2. By amending subsection (i) to read:

10 "(i) For purposes of subsections (g) and (h), the
11 following definitions shall apply:

12 "Completion" means:

13 (1) In a nonjudicial power of sale foreclosure, when
14 the affidavit [~~required under section 667-5 is~~
15 ~~filed,~~] and conveyance document are recorded
16 pursuant to section 667-33; and

17 (2) In a judicial foreclosure, when a purchaser is
18 deemed to acquire title pursuant to subsection
19 (b).

20 "Regular monthly common assessments" shall not include:

21 (1) Any other special assessment, except for a
22 special assessment imposed on all apartments as



- 1 part of a budget adopted pursuant to section
2 514A-83.6;
- 3 (2) Late charges, fines, or penalties;
- 4 (3) Interest assessed by the association of apartment
5 owners;
- 6 (4) Any lien arising out of the assessment; or
- 7 (5) Any fees or costs related to the collection or
8 enforcement of the assessment, including
9 attorneys' fees and court costs."

10 SECTION 4. Section 514B-146, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (b) to read:

13 "(b) Except as provided in subsection (g), when the
14 mortgagee of a mortgage of record or other purchaser of a unit
15 obtains title to the unit as a result of foreclosure of the
16 mortgage, the acquirer of title and the acquirer's successors
17 and assigns shall not be liable for the share of the common
18 expenses or assessments by the association chargeable to the
19 unit which became due prior to the acquisition of title to the
20 unit by the acquirer. The unpaid share of common expenses or
21 assessments shall be deemed to be common expenses collectible
22 from all of the unit owners, including the acquirer and the



1 acquirer's successors and assigns. The mortgagee of record or
2 other purchaser of the unit shall be deemed to acquire title and
3 shall be required to pay the unit's share of common expenses and
4 assessments beginning[+] at the earlier of:

5 (1) Thirty-six days after the order confirming the sale to
6 the purchaser has been filed with the court;

7 (2) Sixty days after the hearing at which the court grants
8 the motion to confirm the sale to the purchaser;

9 (3) Thirty days after the public sale in a nonjudicial
10 power of sale foreclosure [~~pursuant to section 667-5~~];

11 or

12 (4) Upon the recording of the instrument of conveyance;

13 [~~whichever occurs first,~~] provided that the mortgagee of record
14 or other purchaser of the apartment shall not be deemed to
15 acquire title under paragraph (1), (2), or (3) [~~7~~] if transfer of
16 title is delayed past the [~~thirty six days specified in~~
17 ~~paragraph (1), the sixty days specified in paragraph (2), or the~~
18 ~~thirty days specified in paragraph (3), when a person who~~
19 ~~appears at the hearing on the motion or a party to the~~
20 ~~foreclosure action requests~~] relevant time period due to a
21 request for reconsideration of the motion or order to confirm
22 sale, [objects] objection to the form of the proposed order to



1 confirm sale, [~~appeals~~] or appeal of the decision of the court
2 to grant the motion to confirm sale[7] by a party to a
3 foreclosure action; or the [debtor or mortgagor declares
4 bankruptcy or is involuntarily placed into bankruptcy.]
5 declaration of or involuntary placement into bankruptcy of a
6 debtor or mortgagor. In any such case, the mortgagee of record
7 or other purchaser of the apartment shall be deemed to acquire
8 title upon recordation of the instrument of conveyance."

9 2. By amending subsection (i) to read:

10 "(i) For purposes of subsections (g) and (h), the
11 following definitions shall apply, unless the context requires
12 otherwise:

13 "Completion" means:

- 14 (1) In a nonjudicial power of sale foreclosure, when the
15 affidavit [~~required under section 667-5 is filed,~~] and
16 conveyance document are recorded pursuant to section
17 667-33; and
- 18 (2) In a judicial foreclosure, when a purchaser is deemed
19 to acquire title pursuant to subsection (b).

20 "Regular monthly common assessments" does not include:



- 1 (1) Any other special assessment, except for a special
- 2 assessment imposed on all units as part of a budget
- 3 adopted pursuant to section 514B-148;
- 4 (2) Late charges, fines, or penalties;
- 5 (3) Interest assessed by the association;
- 6 (4) Any lien arising out of the assessment; or
- 7 (5) Any fees or costs related to the collection or
- 8 enforcement of the assessment, including attorneys'
- 9 fees and court costs."

10 SECTION 5. Section 667-6, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§667-6 Notice to mortgage creditors.** (a) ~~[Whenever a]~~ A
 13 mortgage creditor ~~[having]~~ holding a mortgage lien on ~~[certain~~
 14 ~~premises desires notice that another mortgage creditor having a~~
 15 ~~mortgage lien on the same premises intends to foreclose the~~
 16 ~~mortgage and sell the mortgaged property pursuant to a power of~~
 17 ~~sale, the mortgage creditor]~~ a property may submit a written
 18 request to ~~[the mortgagee foreclosing or who may foreclose the~~
 19 ~~mortgage by power of sale,]~~ any other mortgage creditor that
 20 holds a lien on the same property to receive notice of the
 21 ~~[mortgagee's]~~ other mortgage creditor's intention to foreclose
 22 the mortgage under power of sale. This request for notice may



1 be submitted any time after the recordation or filing of the
2 subject mortgage at the bureau of conveyances or the land
3 court [~~, but must be submitted~~] and prior to the completion of
4 the publication of the mortgagee's notice of intention to
5 foreclose the mortgage and of the sale of the mortgaged
6 property.

7 (b) [~~This request~~] A request for notice pursuant to this
8 section shall be signed by the [mortgage creditor, or its
9 authorized representative, desiring to receive notice,
10 specifying] requestor or its authorized representative and shall
11 include the name and address of the person to whom the notice is
12 to be mailed. The mortgagee receiving the request shall
13 thereafter give notice to all mortgage creditors who have timely
14 submitted [~~their~~] a request. The requested notice shall be sent
15 by mail or otherwise communicated to the mortgage creditors[~~7~~]
16 not less than seven calendar days prior to the date of sale.

17 (c) No request for copy of any notice pursuant to this
18 section nor any statement or allegation in any such request nor
19 any record thereof shall affect the title to real property or be
20 deemed notice to any person that any party requesting copy of
21 the notice has or claims any right, title, or interest in, or



1 lien or charge upon the property described in the mortgage
2 referred to therein."

3 SECTION 6. Chapter 667, part II, Hawaii Revised Statutes,
4 is amended by amending its title to read as follows:

5 " ~~[+] PART II. []- ALTERNATE~~ POWER OF SALE
6 FORECLOSURE PROCESS"

7 SECTION 7. Section 667-21, Hawaii Revised Statutes, is
8 amended to read as follows:

9 " ~~[+] §667-21 []- Alternate power of sale process;~~

10 ~~definitions.] Definitions. [-(a) The process in this part is an~~
11 ~~alternative power of sale process to the foreclosure by action~~
12 ~~and the foreclosure by power of sale in part I.~~

13 ~~(b)]~~ As used in this part:

14 As used in this part:

15 "Borrower" means the borrower, maker, cosigner, or
16 guarantor under a mortgage agreement.

17 "Foreclosing mortgagee" means the mortgagee that intends to
18 conduct a power of sale foreclosure; provided that the mortgagee
19 is a federally insured bank, a federally insured savings and
20 loan association, a federally insured savings bank, a depository
21 financial services loan company, a nondepository financial
22 services loan company, a credit union insured by the National



1 Credit Union Administration, a bank holding company, a foreign
2 lender as defined in section 207-11, or an institutional
3 investor as defined in section [~~454-1.~~] 485A-102.

4 "Mailed" means to be sent by regular mail, postage prepaid,
5 and by certified, registered, or express mail, postage prepaid
6 and return receipt requested.

7 "Mortgage" means a mortgage, security agreement, or other
8 document under which property is mortgaged, encumbered, pledged,
9 or otherwise rendered subject to a lien for the purpose of
10 securing the payment of money or the performance of an
11 obligation.

12 "Mortgage agreement" includes the mortgage, the note or
13 debt document, or any document amending any of the foregoing.

14 "Mortgaged property" means the property that is subject to
15 the lien of the mortgage.

16 "Mortgagee" means the current holder of record of the
17 mortgagee's or the lender's interest under the mortgage, or the
18 current mortgagee's or lender's duly authorized agent.

19 "Mortgagor" means the mortgagor or borrower named in the
20 mortgage and, unless the context otherwise indicates, includes
21 the current owner of record of the mortgaged property whose
22 interest is subject to the mortgage.



1 "Open house" means a public showing of the mortgaged
2 property during a scheduled time period.

3 "Power of sale" or "power of sale foreclosure" means a
4 nonjudicial foreclosure under this part when the mortgage
5 contains, authorizes, permits, or provides for a power of sale,
6 a power of sale foreclosure, a power of sale remedy, or a
7 nonjudicial foreclosure.

8 "Property" means property (real, personal, or mixed), an
9 interest in property (including fee simple, leasehold, life
10 estate, reversionary interest, and any other estate under
11 applicable law), or other interests that can be subject to the
12 lien of a mortgage.

13 "Record" or "recorded" means a document is recorded or
14 filed with the office of the assistant registrar of the land
15 court under chapter 501 or recorded with the registrar of
16 conveyances under chapter 502, or both, as applicable.

17 "Served" means to have service of the notice of default
18 made in accordance with the service of process or the service of
19 summons under the Hawaii rules of civil procedure, and under
20 sections 634-35 and 634-36."

21 SECTION 8. Section 667-32, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 (b) The recitals in the affidavit required under
2 subsection (a) may, but need not, be substantially in the
3 following form:

4 (1) I am duly authorized to represent or act on behalf of
5 _____ (name of mortgagee) ("foreclosing
6 mortgagee") regarding the following power of sale
7 foreclosure. I am signing this affidavit in
8 accordance with the [alternate] power of sale
9 foreclosure law (Chapter 667, Part II, Hawaii Revised
10 Statutes);

11 (2) The foreclosing mortgagee is a "foreclosing mortgagee"
12 as defined in the power of sale foreclosure law;

13 (3) The power of sale foreclosure is of a mortgage made by
14 _____ (name of mortgagor)
15 ("mortgagor"), dated _____, and recorded in the
16 _____ (bureau of conveyances or office of
17 the assistant registrar of the land court) as
18 _____ (recordation information). The
19 mortgaged property is located at:
20 _____ (address or description of
21 location) and is identified by tax map key number:
22 _____ . The legal description of the mortgaged

1 property is attached as Exhibit "A". The name of the
 2 borrower, if different from the mortgagor, is
 3 _____ ("borrower");

4 (4) Pursuant to the power of sale provision of the
 5 mortgage, the power of sale foreclosure was conducted
 6 as required by the power of sale foreclosure law. The
 7 following is a summary of what was done:

8 (A) A notice of default was served on the mortgagor,
 9 the borrower, and the following person:
 10 _____ . The notice of default was
 11 served on the following date and in the following
 12 manner: _____;

13 (B) The date of the notice of default was _____
 14 (date). The deadline in the notice for curing
 15 the default was _____ (date), which deadline
 16 date was at least sixty days after the date of
 17 the notice;

18 (C) The notice of default was recorded before the
 19 deadline date in the _____ (bureau of
 20 conveyances or office of the assistant registrar
 21 of the land court). The notice was recorded on
 22 _____ (date) as document no. _____. A



1 copy of the recorded notice is attached as
2 Exhibit "1";

3 (D) The default was not cured by the deadline date in
4 the notice of default;

5 (E) A public notice of the public sale was initially
6 published in the classified section of the
7 _____, a daily newspaper of
8 general circulation in the county where the
9 mortgaged property is located, once each week for
10 three consecutive weeks on the following dates:

11 _____ . A copy of the affidavit of
12 publication for the last public notice of the
13 public sale is attached as Exhibit "2". The date
14 of the public sale was _____ (date). The
15 last publication was not less than fourteen days
16 before the date of the public sale;

17 (F) The public notice of the public sale was sent to
18 the mortgagor, to the borrower, to the state
19 director of taxation, to the director of finance
20 of the county where the mortgaged property is
21 located, and to the following:

22 _____ . The public notice was sent on



1 the following dates and in the following manner:
 2 _____ . Those dates were after the
 3 deadline date in the notice of default, and those
 4 dates were at least sixty days before the date of
 5 the public sale;

6 (G) The public notice of the public sale was posted
 7 on the mortgaged property or on such other real
 8 property of which the mortgaged property is a
 9 part on _____ (date). That date was at
 10 least sixty days before the date of the public
 11 sale;

12 (H) Two public showings (open houses) of the
 13 mortgaged property were held (or were not held
 14 because the mortgagor did not cooperate);

15 (I) A public sale of the mortgaged property was held
 16 on a business day during business hours on:
 17 _____ (date), at _____ (time), at the
 18 following location: _____. The
 19 highest successful bidder was
 20 _____ (name) with the highest
 21 successful bid price of \$ _____ ; and



1 (J) At the time the public sale was held, the default
2 was not cured and there was no circuit court
3 foreclosure action pending in the circuit where
4 the mortgaged property is located; and

5 (5) This affidavit is signed under penalty of perjury."

6 SECTION 9. Section 667-42, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[H]~~ §667-42 ~~[H]~~ Application of this part. The requirements
9 of this part shall apply only 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 ~~1999]~~."

13 SECTION 10. Section 667-5, Hawaii Revised Statutes, is
14 repealed.

15 ~~["§667-5 Foreclosure under power of sale; notice;~~
16 ~~affidavit after sale. (a) When a power of sale is contained in~~
17 ~~a mortgage, and where the mortgagee, the mortgagee's successor~~
18 ~~in interest, or any person authorized by the power to act in the~~
19 ~~premises, desires to foreclose under power of sale upon breach~~
20 ~~of a condition of the mortgage, the mortgagee, successor, or~~
21 ~~person shall be represented by an attorney who is licensed to~~



1 ~~practice law in the State and is physically located in the~~
2 ~~State. The attorney shall:~~

3 ~~(1) Give notice of the mortgagee's, successor's, or~~
4 ~~person's intention to foreclose the mortgage and of~~
5 ~~the sale of the mortgaged property, by publication of~~
6 ~~the notice once in each of three successive weeks~~
7 ~~(three publications), the last publication to be not~~
8 ~~less than fourteen days before the day of sale, in a~~
9 ~~newspaper having a general circulation in the county~~
10 ~~in which the mortgaged property lies; and~~

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

13 ~~(b) Copies of the notice required under subsection (a)~~
14 ~~shall be:~~

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

16 ~~(2) Posted on the premises not less than twenty one days~~
17 ~~before the day of sale.~~

18 ~~(c) Upon the request of any person entitled to notice~~
19 ~~pursuant to this section and sections 667-5.5 and 667-6, the~~
20 ~~attorney, the mortgagee, successor, or person represented by the~~
21 ~~attorney shall disclose to the requestor the following~~
22 ~~information:~~



1 ~~(1) The amount to cure the default, together with the~~
2 ~~estimated amount of the foreclosing mortgagee's~~
3 ~~attorneys' fees and costs, and all other fees and~~
4 ~~costs estimated to be incurred by the foreclosing~~
5 ~~mortgagee related to the default prior to the auction~~
6 ~~within five business days of the request; and~~

7 ~~(2) The sale price of the mortgaged property once~~
8 ~~auctioned.~~

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



1 ~~(e) The affidavit and copy of the notice shall be recorded~~
2 ~~and indexed by the registrar, in the manner provided in chapter~~
3 ~~501 or 502, as the case may be.~~

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

6 SECTION 11. Section 667-5.7, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§667-5.7] Public sale. At any public sale pursuant to~~
9 ~~section 667-5, the successful bidder at the public sale, as the~~
10 ~~purchaser, shall not be required to make a downpayment to the~~
11 ~~foreclosing mortgagee of more than ten per cent of the highest~~
12 ~~successful bid price."]~~

13 SECTION 12. 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.~~



S.B. NO. 1175

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 13. This Act does not affect rights and duties
 5 that matured, penalties that were incurred, and proceedings that
 6 were begun before its effective date.

7 SECTION 14. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

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

10

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Report Title:

Nonjudicial Power of Sale Foreclosure

Description:

Repeals authorization for nonjudicial power of sale foreclosure as contained in a mortgage instrument pursuant to section 667-5, HRS, and requires a foreclosing mortgagee to utilize either the judicial foreclosure process or the statutory power of sale foreclosure process containing additional consumer protections found in part II of chapter 667, HRS; makes conforming amendments.

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

