
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. The legislature finds that not all mortgage
2 foreclosure sales end up with negative equity. Accordingly, in
3 situations in which foreclosure sales end up with positive
4 equity, any surplus remaining after paying all liens,
5 encumbrances, fees, and costs should be distributed to the
6 mortgagor of the foreclosed property. In situations in which
7 the mortgagor cannot be located, the legislature believes that
8 the moneys should be transmitted to the unclaimed property trust
9 fund in order to remove any economic incentives for foreclosing
10 mortgagees to retain the surplus.

11 The purpose of this Act is to clarify the foreclosure
12 process by requiring the surplus remaining after a foreclosure
13 sale to be paid to the previous mortgagor of the foreclosed
14 property, and if the previous mortgagor cannot be located, then
15 to the unclaimed property trust fund.

16 SECTION 2. Section 667-10, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§667-10 Power unaffected by transfer; surplus after sale.

2 No sale or transfer by the mortgagor shall impair or annul any
3 right or power of attorney given in the mortgage to the
4 mortgagee to sell or transfer the mortgaged property, as
5 attorney or agent of the mortgagor, except as otherwise provided
6 by chapters 501 and 502. When public sale is made of the
7 mortgaged property under this chapter, the remainder of the
8 proceeds, if any, shall be paid over to the ~~owner of the~~
9 ~~mortgaged~~ previous mortgagor of the foreclosed property, after
10 deducting the amount of claim and all expenses attending the
11 same~~[-]~~, within thirty days after the completion of the sale.
12 If the previous mortgagor of the foreclosed property cannot be
13 located, the remainder of the proceeds shall be transmitted to
14 the director of finance for deposit into the unclaimed property
15 trust fund established under section 523A-26."

16 SECTION 3. Section 667-31, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) From the sale proceeds, after paying all liens and
19 encumbrances in the order of priority as a matter of law, the
20 foreclosing mortgagee's attorney's fees and costs, after paying
21 the fees and costs of the power of sale foreclosure, and after
22 paying the moneys owed to the foreclosing mortgagee, the balance



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1 of the sale proceeds shall be distributed by the foreclosing
 2 mortgagee to junior creditors having valid liens on the
 3 mortgaged property in the order of their priority and not pro
 4 rata. Any remaining surplus after payment in full of all valid
 5 lien creditors shall be distributed to the ~~[mortgager-]~~ previous
 6 mortgagor of the foreclosed property within thirty days after
 7 the completion of the sale. If the previous mortgagor of the
 8 foreclosed property cannot be located, the remaining surplus
 9 shall be transmitted to the director of finance for deposit into
 10 the unclaimed property trust fund established under section
 11 523A-26."

12 SECTION 4. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun before its effective date.

15 SECTION 5. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Report Title:

Mortgage Foreclosures

Description:

Requires remainder of proceeds following a foreclosure sale to be paid to the previous mortgagor of the foreclosed property or to the unclaimed property trust fund.

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

