
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- Credit counseling. (a) No later than thirty
5 days prior to initiating any power of sale foreclosure under
6 section 667-5, a foreclosing mortgagee shall provide a consumer
7 who is an owner-occupant of a mortgaged property that is subject
8 to foreclosure written notice of the availability of credit
9 counseling. The notice shall be sent by first class mail to the
10 address of the mortgaged property or to the address designated
11 by the mortgagor by written notice to the mortgagee as the
12 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 credit counseling agencies approved by the United States
16 Department of Housing and Urban Development, or its successor,
17 and of the toll-free telephone number maintained by the United
18 States Department of Housing and Urban Development, or its



1 successor, which provides information concerning approved credit
2 counseling services offered in the State."

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

5 "**§667-5 Foreclosure under power of sale; notice; affidavit**

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

14 (1) Give notice of the mortgagee's, successor's, or
15 person's intention to foreclose the mortgage and of
16 the sale of the mortgaged property, by publication of
17 the notice once in each of three successive weeks
18 (three publications), the last publication to be not
19 less than fourteen days before the day of sale, in a
20 newspaper having a general circulation in the county
21 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~~] requester the
12 following 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) If the mortgagor, who is a consumer and an owner-
22 occupant of a mortgaged property, requests in writing a copy of



1 the promissory note and mortgage document, the mortgagee shall
2 not initiate foreclosure proceedings under this section until
3 the mortgagee has sent those copies to the mortgagor by
4 certified, registered, or express mail, postage prepaid and
5 return receipt requested. The request by the mortgagor shall be
6 sent by certified, registered, or express mail, postage prepaid
7 and return receipt requested, to the address of the mortgagee or
8 its agent as stated in the credit counseling notice referred to
9 in section 667- (a) within fifteen days after the date of
10 notice.

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



1 mortgagee's acts in the premises fully and particularly, in the
2 bureau of conveyances.

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

6 ~~[(f)]~~ (g) This section is inapplicable if the mortgagee is
7 foreclosing as to personal property only."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.
14

INTRODUCED BY: 
JAN 24 2011



Report Title:

Mortgages; Foreclosure; Mediation

Description:

Requires foreclosing lenders to notify certain mortgagors about credit counseling no later than 30 days prior to a regular nonjudicial foreclosure. Allows certain mortgagors to forestall regular nonjudicial foreclosure proceedings by requesting copies of the promissory note and mortgage document.

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