

JAN 26 2011

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 amended to read as follows:

3 "**§667-5 Foreclosure under power of sale; notice; affidavit**
4 **after sale.** (a) When a power of sale is contained in a
5 mortgage, and where the mortgagee, the mortgagee's successor in
6 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 recordation of both the copy of the notice of sale
15 and the mortgagee's affidavit shall operate as full satisfaction
16 of the debt owed by the borrower to the foreclosing mortgagee
17 and the foreclosing mortgagee shall not be entitled to pursue or
18 obtain a deficiency judgment against the borrower. The debt of
19 any other lien creditor, including but not limited to a holder
20 of an association lien that arises under a declaration filed
21 pursuant to chapters 514A or 514B, whose lien is subordinate to
22 the mortgage being foreclosed and is extinguished by the



1 foreclosure sale, shall not be entitled to pursue or obtain a
2 monetary judgment against the borrower.

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."

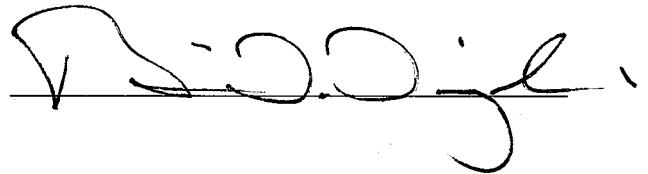
8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY:



Report Title:

Mortgage Foreclosures; Deficiency Judgments

Description:

Prohibits foreclosing mortgagees in nonjudicial foreclosures from pursuing deficiency judgments against the borrowers. Prohibits junior lienholders from pursuing monetary judgments against the borrowers.

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

