
A BILL FOR AN ACT

RELATING TO SUSPENSION OF FORECLOSURE ACTIONS BY JUNIOR
LIENHOLDERS.

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

1 SECTION 1. The legislature recognizes that once a
2 foreclosure action is initiated in the circuit courts, all
3 junior lienholders, including an association, are prohibited
4 from initiating or continuing with a nonjudicial foreclosure.

5 During the pendency of a judicial foreclosure action in
6 circuit court, which can take years to resolve, and prior to the
7 appointment of a foreclosure commissioner, the property in an
8 association can fall into a state of disrepair and negatively
9 impact not only the neighboring properties but the community at
10 large. In addition, the association's fiscal solvency is
11 burdened by being unable to collect maintenance fees from the
12 empty and not foreclosed unit, a cost which is then shared by
13 the other homeowners.

14 In order to minimize property damage and allow associations
15 an opportunity to remain fiscally viable during a pending
16 foreclosure, this Act allows the associations to commence or
17 continue with a nonjudicial foreclosure even if the lender has



1 filed for foreclosure. This Act also reserves the right of
2 owner-occupants to require the foreclosing mortgagee to
3 participate in the dispute resolution process in situations
4 where an association forecloses on residential real property
5 occupied by owner-occupant mortgagors and the mortgagee
6 subsequently forecloses its lien on the same property.

7 SECTION 2. Section 667-37, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§667-37 Judicial action of foreclosure before public**
10 **sale.** This part shall not prohibit the foreclosing mortgagee,
11 or any other creditor having a recorded lien on the mortgaged
12 property before the recordation of the notice of default under
13 section 667-23, from filing an action for the judicial
14 foreclosure of the mortgaged property in the circuit court of
15 the circuit where the mortgaged property is located; provided
16 that the action is filed before the public sale is held. [~~The~~
17 ~~power of sale foreclosure process shall be stayed during the~~
18 ~~pendency of the circuit court foreclosure action.~~]"

19 SECTION 3. Section 667-57, Hawaii Revised Statutes, is
20 amended as follows:

21 **"§667-57 Suspension of foreclosure actions by junior**
22 **lienholders.** (a) Upon initiation of a foreclosure action



1 pursuant to part IA or part II by a foreclosing mortgagee, no
2 junior lienholder, except for an association, shall be permitted
3 to initiate or continue a nonjudicial foreclosure until the
4 foreclosure initiated by the foreclosing mortgagee has been
5 concluded by a judgment issued by a court pursuant to section
6 667-1.5, the recording of an affidavit after public sale
7 pursuant to section 667-33, or the filing of an agreement under
8 the mortgage foreclosure dispute resolution provisions of
9 section 667-81[-]; provided that if pursuant to part IA or part
10 VI:

11 (1) An association forecloses on residential real property
12 occupied by one or more mortgagors who are owner-
13 occupants; and
14 (2) The mortgagee subsequently forecloses its lien on the
15 same property;
16 those owner-occupants shall retain their right to require the
17 foreclosing mortgagee to participate in the procedures
18 established under part V, notwithstanding the association's
19 foreclosure.

20 (b) Upon initiation of a foreclosure action pursuant to
21 part II by a foreclosing mortgagee, no junior lienholder, except
22 for an association, shall be permitted to initiate or continue a



1 nonjudicial foreclosure during the pendency of a stay pursuant
2 to section 667-83; provided that a junior lienholder may
3 initiate or continue with a nonjudicial foreclosure if[+]

4 ~~(1) The] the junior lien foreclosure was initiated before~~
5 ~~the foreclosure action by the foreclosing mortgagee[+]~~
6 ~~or~~

7 ~~(2) The junior lienholder is an association and has not~~
8 ~~been provided notice of the foreclosure action,~~
9 ~~pursuant to section 667-21.5, or has not received~~
10 ~~written notification of a case opening pursuant to~~
11 ~~section 667-79.]~~

12 and if pursuant to part IA or part VI:

13 (1) An association forecloses on residential real property
14 occupied by one or more mortgagors who are owner-
15 occupants; and

16 (2) The mortgagee subsequently forecloses its lien on the
17 same property;

18 those owner-occupants shall retain their right to require the
19 foreclosing mortgagee to participate in the procedures
20 established under part V, notwithstanding the association's
21 foreclosure."



1 SECTION 4. Section 667-83, Hawaii Revised Statutes, is
2 amended by amending subsection (a) as follows:

3 "(a) The written notification of a case opening under
4 section 667-79 shall operate as a stay of the foreclosure
5 proceeding and may be recorded; provided that:

6 (1) The written notification shall not act as a stay on a
7 foreclosure proceeding by an association [~~unless the~~
8 ~~association has been provided notice pursuant to~~
9 ~~sections 667-5.5, 667-21.5, or 667-79~~]; and

10 (2) The written notification shall not act as a stay on a
11 foreclosure proceeding for the purpose of the date by
12 which the default must be cured pursuant to section
13 667-22(a)(6)."

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

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

17



Report Title:

Foreclosure Actions; Junior Lienholders; Condominium Associations

Description:

Allows a condominium association, as a junior lienholder, to commence or continue a nonjudicial foreclosure action on a property subject to a judicial foreclosure even if the lender has filed for foreclosure. Preserves the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process in situations where an association forecloses on residential real property occupied by owner-occupant mortgagors and the mortgagee subsequently forecloses its lien on the same property. (SD1)

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