

JAN 18 2013

---

# 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



1 continue with a nonjudicial foreclosure until the circuit court  
2 appoints a commissioner.

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

5 "**§667-37 Judicial action of foreclosure before public**  
6 **sale.** This part shall not prohibit the foreclosing mortgagee,  
7 or any other creditor having a recorded lien on the mortgaged  
8 property before the recordation of the notice of default under  
9 section 667-23, from filing an action for the judicial  
10 foreclosure of the mortgaged property in the circuit court of  
11 the circuit where the mortgaged property is located; provided  
12 that the action is filed before the public sale is held. The  
13 power of sale foreclosure, or nonjudicial foreclosure process,  
14 process shall be stayed [~~during the pendency of~~] once a  
15 commissioner is appointed by the circuit court in the judicial  
16 foreclosure action."

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

19 "**§667-57 Suspension of foreclosure actions by junior**  
20 **lienholders.** (a) Upon initiation of a foreclosure action  
21 pursuant to part IA or part II by a foreclosing mortgagee, no  
22 junior lienholder, except for an association, shall be permitted



1 to initiate or continue a nonjudicial foreclosure until the  
2 foreclosure initiated by the foreclosing mortgagee has been  
3 concluded by a judgment issued by a court pursuant to section  
4 667-1.5, the recording of an affidavit after public sale  
5 pursuant to section 667-33, or the filing of an agreement under  
6 the mortgage foreclosure dispute resolution provisions of  
7 section 667-81.

8 (b) Upon initiation of a foreclosure action pursuant to  
9 part II by a foreclosing mortgagee, no junior lienholder, except  
10 for an association, shall be permitted to initiate or continue a  
11 nonjudicial foreclosure during the pendency of a stay pursuant  
12 to section 667-83; provided that a junior lienholder may  
13 initiate or continue with a nonjudicial foreclosure if[+

14 ~~(1) The] the junior lien foreclosure was initiated before~~

15 the foreclosure action by the foreclosing mortgagee[+

16 ~~or~~

17 ~~(2) The junior lienholder is an association and has not~~  
18 ~~been provided notice of the foreclosure action,~~  
19 ~~pursuant to section 667-21.5, or has not received~~  
20 ~~written notification of a case opening pursuant to~~  
21 ~~section 667-79]."~~



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

INTRODUCED BY:

Rosalyn H. Sob

Will Syro  
Sen. D.C. Fikoly  
For Bill

Theranne Chun Oakland  
For



# S.B. NO. 569

**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 until a foreclosure commissioner is appointed by the circuit court.

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

