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## A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1           SECTION 1. The legislature finds that the Hawaii Revised  
2 Statutes require a foreclosing mortgagee or association to  
3 publish a public notice of a public sale of a mortgaged  
4 property. The law grants the mortgagee or association the  
5 option of publishing the notice either:

6           (1) Three times in a newspaper; or

7           (2) On a state website and once in a newspaper.

8 However, the State also finds that while an increasing number of  
9 individuals have access to the Internet, not everyone has  
10 immediate access. These individuals sometimes miss the  
11 publication of a notice when it is posted on a state website and  
12 published only once in a newspaper.

13           The purpose of this Act is to enhance the transparency of  
14 the foreclosure process by requiring every public notice of a  
15 public sale to be published three times in a newspaper even if  
16 the notice was posted on a state website.



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1 SECTION 2. Section 667-20, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§667-20[+] **Publication of notice of public sale.** The  
4 foreclosing mortgagee or association in a foreclosure by action  
5 shall have the public notice of the public sale:

6 (1) Printed in not less than seven-point font and  
7 published in the classified section of a newspaper  
8 that is published at least weekly and having a general  
9 circulation in the county in which the mortgaged  
10 property or unit is located. The public notice shall  
11 be published once each week for three consecutive  
12 weeks, constituting three publications. The public  
13 sale shall take place no sooner than fourteen days  
14 after the date of the publication of the third public  
15 notice advertisement; [∅] and

16 (2) Not less than twenty-eight days before the date of the  
17 public sale, published on a state website at the  
18 discretion of the agency that maintains the website[+  
19 ~~provided that the public notice shall be published at~~  
20 ~~least once in the format described in paragraph (1) at~~  
21 ~~least fourteen days prior to the public sale]."~~



1 SECTION 3. Section 667-20.1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§667-20.1[+] **Postponement, cancellation of sale.** (a)

4 The public sale may be either postponed or canceled by the  
5 court-appointed commissioner. Notice of the postponement or the  
6 cancellation of the public sale shall be:

7 (1) Announced by the court-appointed commissioner at the  
8 date, time, and place of the last scheduled public  
9 sale; and

10 (2) Provided to:

11 (A) The mortgagor, the borrower, and the foreclosing  
12 mortgagee;

13 (B) Any prior or junior creditors who have a recorded  
14 lien on the mortgaged property before the  
15 commencement of the foreclosure action; and

16 (C) Any party named in the foreclosure action and any  
17 prospective bidder who requested notice of the  
18 public sale date or any change in the public sale  
19 date.

20 (b) If there is a postponement of the public sale of the  
21 mortgaged property, the court-appointed commissioner shall have



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1 a new public notice of the public sale published [~~once in the~~  
2 ~~format~~] and follow all of the public notice of public sale  
3 requirements described in section 667-20. The new public notice  
4 shall state that it is a notice of a postponed sale. The public  
5 sale shall take place no sooner than fourteen days after the  
6 date of the publication of the new public notice. Not less than  
7 fourteen days before the rescheduled date of the public sale, a  
8 copy of the new public notice of the rescheduled public sale  
9 shall be posted on the mortgaged property or on another real  
10 property of which the mortgaged property is a part, and it shall  
11 be mailed or delivered to the mortgagor, the borrower, the  
12 foreclosing mortgagee, and any other person entitled to receive  
13 notification of the foreclosure action under subsection (a)(2).

14 ~~[(c) Upon the fourth postponement of every series of four~~  
15 ~~consecutive postponements, the court-appointed commissioner~~  
16 ~~shall follow all of the public notice of public sale~~  
17 ~~requirements of section 667-20.]"~~

18 SECTION 4. Section 667-22, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) When the mortgagor or the borrower has breached the  
21 mortgage agreement, and when the foreclosing mortgagee intends



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1 to conduct a power of sale foreclosure under this part, the  
2 foreclosing mortgagee shall prepare a written notice of default  
3 and intention to foreclose addressed to the mortgagor, the  
4 borrower, and any guarantor. The notice of default and  
5 intention to foreclose shall state:

- 6 (1) The name and address of the current mortgagee;
- 7 (2) The name and last known address of the mortgagors, the  
8 borrowers, and any guarantors;
- 9 (3) With respect to the mortgaged property, the address or  
10 a description of its location, tax map key number, and  
11 certificate of title or transfer certificate of title  
12 number if registered in the land court;
- 13 (4) The description of the default or, if the default is a  
14 monetary default, an itemization of the delinquent  
15 amount;
- 16 (5) The action required to cure the default, including the  
17 delinquent amount and the estimated amount of the  
18 foreclosing mortgagee's attorney's fees and costs, and  
19 all other fees and costs related to the default  
20 estimated to be incurred by the foreclosing mortgagee  
21 by the deadline date;



- 1           (6) The date by which the default must be cured, which  
2           shall be at least sixty days after the date of the  
3           notice of default and intention to foreclose;
- 4           (7) A statement that if the default is not cured by the  
5           deadline date stated in the notice of default and  
6           intention to foreclose, the entire unpaid balance of  
7           the moneys owed to the mortgagee under the mortgage  
8           agreement will become due, that the mortgagee intends  
9           to conduct a power of sale foreclosure to sell the  
10          mortgaged property at a public sale without any court  
11          action and without going to court, and that the  
12          mortgagee or any other person may acquire the  
13          mortgaged property at the public sale;
- 14          (8) A statement that if the default is not cured by the  
15          deadline date stated in the notice of default and  
16          intention to foreclose, the mortgagee may publish the  
17          public notice of the public sale in a newspaper of  
18          general circulation [~~or~~] and on a state website,  
19          pursuant to section 667-27(d);
- 20          (9) The name, address, electronic address, and telephone  
21          number of the attorney who is representing the



1           foreclosing mortgagee; provided that the attorney  
2           shall be licensed to practice law in the State and  
3           physically located in the State; and

4           (10) Notice of the right of the owner-occupant to elect to  
5           participate in any other process as established by  
6           law."

7           SECTION 5. Section 667-27, Hawaii Revised Statutes, is  
8           amended by amending subsection (d) to read as follows:

9           "(d) The foreclosing mortgagee shall have the public  
10          notice of the public sale:

11          (1) Printed in not less than seven-point font and  
12          published in the classified section of a newspaper  
13          that is published at least weekly and having a general  
14          circulation in the county in which the mortgaged  
15          property is located. The public notice shall be  
16          published once each week for three consecutive weeks,  
17          constituting three publications. The public sale  
18          shall take place no sooner than fourteen days after  
19          the date of the publication of the third public notice  
20          advertisement; [~~or~~] and



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1           (2) Not less than twenty-eight days before the date of the  
2           public sale, published on a state website at the  
3           discretion of the agency that maintains the website;  
4           provided that[±

5           ~~(A) If~~ if the mortgaged property is owned by an  
6           owner-occupant, the public notice shall be  
7           published on a website maintained by the  
8           department. The department shall publish the  
9           public notice pursuant to this ~~[subparagraph]~~  
10          paragraph upon satisfaction of the filing  
11          requirements of section 667-76(b) [~~±and~~

12          ~~(B) The public notice shall be published at least~~  
13          ~~once in the format described in paragraph (1) at~~  
14          ~~least fourteen days prior to the public sale]."~~

15          SECTION 6. Section 667-76, Hawaii Revised Statutes, is  
16          amended by amending subsection (b) to read as follows:

17          "(b) A mortgagee who elects to publish a public notice of  
18          public sale electronically pursuant to section [~~667-27(d)(2)(A)]~~  
19          667-27(d)(2) shall publish the notice by filing the same with  
20          the department and paying a filing fee of \$300, which shall be





1 deposited into the mortgage foreclosure dispute resolution  
2 special fund established under section 667-86."

3 SECTION 7. Section 667-92, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) When a unit owner has failed to pay an assessment,  
6 and when the association intends to conduct a power of sale  
7 foreclosure under this part, the association shall prepare a  
8 written notice of default and intention to foreclose addressed  
9 to the unit owner. The notice of default and intention to  
10 foreclose shall state:

- 11 (1) The name and address of the association;
- 12 (2) The name and last known address of the unit owners;
- 13 (3) With respect to the unit, the address or a description  
14 of its location, tax map key number, and certificate  
15 of title or transfer certificate of title number if  
16 registered in the land court;
- 17 (4) The description of the default or, if the default is a  
18 monetary default, an itemization of the delinquent  
19 amount;
- 20 (5) The action required to cure the default, including the  
21 delinquent amount and the estimated amount of the



1 association's attorney's fees and costs, and all other  
2 fees and costs related to the default estimated to be  
3 incurred by the association by the deadline date;

4 (6) The date by which the default must be cured, which  
5 shall be within sixty days after service of the notice  
6 of default and intention to foreclose;

7 (7) A statement that if the default is not cured by the  
8 deadline date stated in the notice of default and  
9 intention to foreclose, the entire unpaid balance of  
10 the moneys owed to the association will become due,  
11 that the association intends to conduct a power of  
12 sale foreclosure to sell the unit at a public sale  
13 without any court action and without going to court,  
14 and that the association or any other person may  
15 acquire the unit at the public sale;

16 (8) A statement that if the default is not cured by the  
17 deadline date stated in the notice of default and  
18 intention to foreclose, the association may publish  
19 the public notice of the public sale in a newspaper of  
20 general circulation [~~or~~] and on a state website[~~r~~]  
21 pursuant to section 667-96(d);



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1           (9) The name, address, electronic address, and telephone  
2           number of the attorney who is representing the  
3           association; provided that the attorney shall be  
4           licensed to practice law in the State and physically  
5           located in the State; and

6           (10) Notice of the right of the unit owner to submit a  
7           payment plan within thirty days pursuant to subsection  
8           (c)."

9           SECTION 8. Section 667-96, Hawaii Revised Statutes, is  
10          amended by amending subsection (d) to read as follows:

11          "(d) The association shall have the public notice of the  
12          public sale:

13           (1) Printed in not less than seven-point font and  
14           published in the classified section of a newspaper  
15           that is published at least weekly and having a general  
16           circulation in the county in which the unit is  
17           located. The public notice shall be published once  
18           each week for three consecutive weeks, constituting  
19           three publications. The public sale shall take place  
20           no sooner than fourteen days after the date of the



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1 publication of the third public notice advertisement;

2 [~~or~~] and

3 (2) Not less than twenty-eight days before the date of the  
4 public sale, published on a state website at the  
5 discretion of the agency that maintains the website[~~;~~  
6 ~~provided that the public notice shall be published at~~  
7 ~~least once in the format described in paragraph (1) at~~  
8 ~~least fourteen days prior to the public sale]."~~

9 SECTION 9. Section 667-97, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§667-97[+] **Postponement, cancellation of sale.** (a)

12 The public sale may be either postponed or canceled by the  
13 association. Notice of the postponement or the cancellation of  
14 the public sale shall be:

15 (1) Announced by the association at the date, time, and  
16 place of the last scheduled public sale; and

17 (2) Provided to any other person who is entitled to  
18 receive the notice of default under section 667-92.

19 (b) If there is a postponement of the public sale of the  
20 unit, the association shall have a new public notice of the  
21 public sale [~~shall be~~] published [~~once in the format~~] and follow



1 all of the public notice of public sale publication requirements  
2 described in section [~~667-96.~~] 667-96(d). The new public notice  
3 shall state that it is a notice of a postponed sale. The public  
4 sale shall take place no sooner than fourteen days after the  
5 date of the publication of the new public notice. Not less than  
6 fourteen days before the date of the public sale, a copy of the  
7 new public notice shall be posted on the unit or on another real  
8 property of which the unit is a part, and it shall be mailed or  
9 delivered to the unit owner and to any other person entitled to  
10 receive notice under section 667-92(e).

11 (c) Upon the fourth postponement of every series of four  
12 consecutive postponements, the association shall follow all of  
13 the public notice of public sale requirements of section 667-96,  
14 including the requirements of mailing and posting under section  
15 667-96(c) and of publication under section 667-96(d).

16 (d) The default under the association documents may be  
17 cured no later than three business days before the date of the  
18 public sale of the unit by paying the entire amount that would  
19 be owed to the association if the payments under the association  
20 documents had not been accelerated, plus the association's  
21 attorney's fees and costs, and all other fees and costs incurred



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1 by the association related to the default, unless otherwise  
2 agreed to between the association and the unit owner. There is  
3 no right to cure the default or any right of redemption after  
4 that time. If the default is so cured, the public sale shall be  
5 canceled."

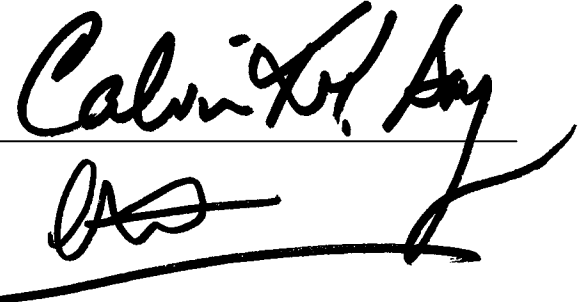
6 SECTION 10. This Act does not affect rights and duties  
7 that matured, penalties that were incurred, and proceedings that  
8 were begun before its effective date.

9 SECTION 11. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 12. This Act shall take effect on July 1, 2017.

12

INTRODUCED BY:

  
A handwritten signature in black ink, appearing to read "Calvin H. Ay", is written over a horizontal line. Below the line is another signature, possibly initials, also in black ink.

JAN 19 2017



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**Report Title:**

Foreclosure; Public Notice; Public Sale; Newspapers; Internet

**Description:**

Requires every public notice of a public sale of mortgaged property to be published 3 times in a newspaper and on a state website.

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

