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# A BILL FOR AN ACT

RELATING TO UNOCCUPIED RESIDENTIAL PROPERTIES.

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

1 SECTION 1. Hawaii has the longest foreclosure process in  
2 the country. As of the second quarter of 2018, Hawaii's  
3 foreclosure timeline from the first public notice to the end of  
4 the process can take as long as 1,553 days. This period of the  
5 foreclosure process sometimes results in a situation known as a  
6 zombie foreclosure, where a homeowner moves out after  
7 foreclosure has been initiated but before the foreclosure is  
8 completed or the title to the property is transferred to the new  
9 owner after sale.

10 In zombie foreclosure situations, because the homeowner is  
11 not occupying the property and the foreclosing party or  
12 prevailing purchaser cannot occupy the home due to not having  
13 title to the property, the property often falls into disrepair.  
14 Squatters may start to illegally occupy the home and the  
15 property may become a center of criminal activity. As a result,  
16 zombie foreclosure properties decrease the value of the home and  
17 the surrounding properties.



1           The legislature finds that the use of unoccupied foreclosed  
2 residential properties as rental properties during the period  
3 between when a homeowner receives notice of a foreclosure action  
4 and the transfer of title to the prevailing purchaser after a  
5 foreclosure auction will mitigate the property depreciation and  
6 hazards that are associated with unoccupied homes.

7           The purpose of this Act is to prevent residential property  
8 subject to judicial foreclosure actions from becoming unoccupied  
9 by:

- 10           (1) Making the homeowner liable for a fine if the  
11                 homeowner fails to occupy or rent the foreclosed  
12                 property thirty days after the notice of foreclosure  
13                 has been served;
- 14           (2) Transferring liability to pay a fine from a homeowner  
15                 to the foreclosing party if the sale of a foreclosed  
16                 property is postponed or cancelled;
- 17           (3) Making a prevailing purchaser liable for a fine if the  
18                 prevailing purchaser fails to transfer title of the  
19                 foreclosed property within a specified time after the  
20                 foreclosure sale; and



1 (4) Establishing the minimum conditions under which a  
2 renting party may rent a foreclosed property to a  
3 tenant.

4 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
5 by adding a new section to be appropriately designated and to  
6 read as follows:

7 "§46- Regulation, enforcement, and use of fines for  
8 unoccupied residential properties subject to judicial  
9 foreclosure. (a) Notwithstanding any law to the contrary, the  
10 county council of each county shall adopt and provide for the  
11 enforcement of ordinances regulating the fines imposed on the  
12 homeowner, foreclosing party, or prevailing purchaser of an  
13 unoccupied foreclosed property and the regulation of rentals of  
14 foreclosed properties pursuant to part of chapter 667.

15 (b) All proceeds of the fine collected pursuant to this  
16 section and part of chapter 667 shall be used by the county  
17 in the following priority:

18 (1) To reimburse the county for all administrative costs  
19 of regulating and enforcing the collection of the  
20 fines; and



1 (2) To improve the infrastructure in the residential  
2 subdivision within which the foreclosed property is  
3 located.

4 (c) For the purposes of this section:  
5 "Foreclosed property" shall have the same meaning as  
6 section 667-A.

7 "Residential property" shall have the same meaning as  
8 section 667-A."

9 SECTION 3. Chapter 667, Hawaii Revised Statutes, is  
10 amended by adding a new part to be appropriately designated and  
11 to read as follows:

12 "PART .

13 JUDICIAL FORECLOSURE OF UNOCCUPIED RESIDENTIAL PROPERTIES

14 §667-A Definitions. For the purposes of this part:

15 "Foreclosed property" means an unoccupied residential  
16 property subject to a judicial foreclosure action pursuant to  
17 part IA of this chapter.

18 "Rental agreement" means all agreements, written or oral,  
19 which establish or modify the terms, conditions, rules,  
20 regulations, or any other provisions concerning the use and  
21 occupancy of a foreclosed property by a tenant.



1 "Renting party" means the homeowner, foreclosing party, or  
2 prevailing purchaser who rents the foreclosed property to a  
3 tenant pursuant to this part.

4 "Residential property" means a one- or two-family  
5 unattached building designed or used exclusively for residential  
6 occupancy and located on a parcel zoned for residential use, and  
7 subject to judicial foreclosure.

8 "Security deposit" means money deposited by or for the  
9 tenant with the renting party to be held by the renting party  
10 to:

- 11 (1) Remedy tenant defaults for accidental or intentional  
12 damages resulting from failure to maintain the  
13 foreclosed property, pay rent due, or return all keys  
14 furnished by the renting party at the termination of  
15 the rental agreement;
- 16 (2) Clean the foreclosed property or have it cleaned at  
17 the termination of the rental agreement so as to place  
18 the condition of the foreclosed property in as fit a  
19 condition as that which the tenant entered into  
20 possession of the foreclosed property;



- 1 (3) Compensate for damages caused by a tenant who  
2 wrongfully quits the foreclosed property;
- 3 (4) Compensate for damages caused by any pet animal  
4 allowed to reside in foreclosed property pursuant to  
5 the rental agreement; and
- 6 (5) Compensate the renting party for moneys owed by the  
7 tenant under the rental agreement for utility service  
8 provided by the renting party but not included in the  
9 rent.

10 "Tenant" means any person who occupies a foreclosed  
11 property under a rental agreement.

12 **§667-B Imposition of fine.** (a) A fine of \$1,000 per day  
13 shall be imposed on a foreclosed property homeowner that does  
14 not occupy or rent the foreclosed property; provided that:

- 15 (1) The fine shall not start to accrue until days  
16 after the homeowner is served with a notice of  
17 judicial foreclosure on the foreclosed property  
18 pursuant to section 667-5.5, and not including the day  
19 that the notice was served; and
- 20 (2) The fine shall cease to accrue against the foreclosed  
21 property homeowner:



1 (A) If the foreclosing party postpones or cancels the  
2 foreclosure sale; or

3 (B) Upon the date of the public sale.

4 (b) A fine of \$1,000 per day shall be imposed on the  
5 foreclosing party if the public sale is postponed or cancelled  
6 and the foreclosed property is unoccupied; provided that:

7 (1) The fine shall not start to accrue until days  
8 after the date of the postponed or cancelled public  
9 sale, and not including the day of the public sale;  
10 and

11 (2) The fine shall cease to accrue against the foreclosing  
12 party:

13 (A) Upon the date a tenant is determined to have  
14 wrongfully quit the foreclosed property pursuant  
15 to section 667-E(d); provided that the fine shall  
16 begin to accrue days after the determination  
17 if the foreclosed property is not occupied by  
18 that date; or

19 (B) Upon the date of the public sale.

20 (c) A fine of \$1,000 per day shall be imposed on the  
21 prevailing purchaser in the public sale of a foreclosed property



1 if the conveyance document to transfer title to the prevailing  
2 purchaser is not recorded within            days of the public sale  
3 and the foreclosed property is unoccupied; provided that:

4       (1) The fine shall not start to accrue until            days  
5           after the date of the public sale; and

6       (2) The fine shall cease to accrue against the purchasing  
7           party on the date that the conveyance document is  
8           recorded.

9       (d) If a renting party fails to put a tenant into  
10       possession of the foreclosed property on the day and in the  
11       condition agreed upon in the rental agreement, fines shall start  
12       to immediately accrue against the renting party. If a tenant  
13       fails to take possession of the foreclosed property on the day  
14       agreed upon in the rental agreement, the fine shall not start to  
15       accrue against the renting party until            days after the date  
16       that the tenant agreed to take possession of the foreclosed  
17       property.

18       (e) No fines shall accrue pursuant to this section when  
19       the foreclosed property is occupied. If a foreclosed property  
20       becomes unoccupied after a period of occupancy, the fines shall:





1 (1) Be reinstated and start to accrue days after the  
2 foreclosed property becomes unoccupied after a period  
3 of occupancy, except as provided in paragraph (2);

4 (2) Be reinstated and start to accrue days after the  
5 foreclosed property becomes unoccupied due to a tenant  
6 wrongfully quitting the residential property; and

7 (3) Accrue against the homeowner, foreclosing party, or  
8 prevailing purchaser as provided in subsections (a),  
9 (b), or (c), respectively.

10 (f) No fines shall accrue pursuant to this section when  
11 the foreclosed property is uninhabitable or poses a threat to  
12 health or safety, as determined by the county or an agency of  
13 the State.

14 §667-C County regulation, enforcement, and use of the  
15 fine. The counties shall adopt legislation to:

16 (1) Regulate and enforce the imposition of the fine as  
17 provided in section 667-B; and

18 (2) Require that the proceeds of the fine, after the  
19 county has been reimbursed for all administrative  
20 costs of regulating and enforcing the fine, be used  
21 for the infrastructure development of the residential



1 subdivision within which the foreclosed property is  
2 located.

3 **§667-D Exemption from the residential landlord-tenant**  
4 **code.** Chapter 521 shall not apply to any residential agreement  
5 entered into between a renting party and tenant pursuant to this  
6 part; provided that the renting party has not rented the  
7 foreclosed property to the tenant for longer than days; and  
8 provided further that the foreclosed property has not been  
9 rented to any tenants for longer than cumulative days.

10 **§667-E Rent; security deposit.** (a) The renting party and  
11 tenant may agree to any consideration, not otherwise prohibited  
12 by law, as rent. Rents shall be payable at the time and place  
13 agreed to by the parties. Where the rental agreement provides  
14 for a late charge payable to the renting party for rent not paid  
15 when due, the late charge shall not exceed eight per cent of the  
16 amount of rent due.

17 (b) The renting party may require, as a condition of a  
18 rental agreement, a security deposit to be paid by or for the  
19 tenant in an amount not in excess of a sum equal to one month's  
20 rent. No part of the security deposit shall be construed as



1 payment of the last month's rent by the tenant, unless mutually  
2 agreed upon, in writing, by the renting party and tenant.

3 (c) The renting party may require, as a condition of  
4 rental agreement, a security deposit in an amount agreed upon by  
5 the renting party and tenant to compensate the renting party for  
6 any damages caused by any pet animal allowed to reside in the  
7 foreclosed property pursuant to the rental agreement; provided  
8 that the additional security deposit amount for a pet animal  
9 under this subsection:

10 (1) Shall not be required:

11 (A) From any tenant who does not have a pet animal  
12 that resides in the premises; or

13 (B) For an assistance animal that is a reasonable  
14 accommodation for a tenant with a disability  
15 pursuant to section 515-3; and

16 (2) Shall be in an amount not in excess of a sum equal to  
17 one month's rent.

18 No part of the security deposit agreed upon by the renting party  
19 and tenant to compensate the renting party for any damages  
20 caused by any pet animal allowed to reside in the foreclosed  
21 property shall be construed as payment of the last month's rent



1 by the tenant, unless mutually agreed upon, in writing, by the  
2 renting party and tenant.

3 (d) For the purposes of this section, if a tenant is  
4 absent from the foreclosed property for a continuous period of  
5 twenty days or more without written notice to the renting party,  
6 the tenant shall be deemed to have wrongfully quit the  
7 foreclosed property; provided that the tenant shall not be  
8 considered to be absent from the foreclosed property without  
9 notice to the renting party during any period for which the  
10 renting party has received payment of rent. With respect to  
11 such a tenant, the renting party may retain the entire amount of  
12 any security deposit the renting party has received from or on  
13 behalf of such tenant.

14 **§667-F Prohibition on use of an unoccupied residential**  
15 **property subject to judicial foreclosure as a vacation rental.**

16 A foreclosed property shall not be considered to be occupied if  
17 it is used as a vacation rental. Fines pursuant to section  
18 667-B shall accrue against the homeowner, foreclosing party, or  
19 prevailing purchaser if the foreclosed property is used as a  
20 vacation rental.



1           §667-G Tenant's remedies for failure by renting party to  
2 supply possession. (a) If the renting party fails to put the  
3 tenant into possession of the foreclosed property in the agreed  
4 condition at the beginning of the agreed term:

5           (1) The tenant shall not be liable for the rent during any  
6 period the tenant is unable to enter into possession;

7           (2) At any time during the period the tenant is so unable  
8 to enter into possession the tenant may notify the  
9 renting party that the tenant has terminated the  
10 rental agreement; and

11           (3) The tenant shall have the right to recover damages in  
12 the amount of reasonable expenditures necessary to  
13 secure adequate substitute housing, the recovery to be  
14 made either by action brought in the district court or  
15 by deduction from the rent upon submission to the  
16 renting party of receipts totaling at least:

17           (A) The amount of abated rent; plus

18           (B) The amount claimed against the rent.

19           (b) In any district court proceeding brought by the tenant  
20 under this section, the court may award the tenant substitute



1 housing expenditures, reasonable court costs, and attorney's  
2 fees.

3       **§667-H Medical cannabis; tenant use; eviction.** Any  
4 provision in a rental agreement allowing for eviction of a  
5 tenant who has a valid certificate for the medical use of  
6 cannabis in any form is void unless the rental agreement allows  
7 for eviction for smoking tobacco and the tenant uses medical  
8 cannabis by means of smoking.

9       **§667-I Early termination of tenancy; change of locks;**  
10 **victims of domestic violence.** (a) A tenant may terminate a  
11 rental agreement without penalty or fees for early termination  
12 or liability for future rent if the tenant or an immediate  
13 family member of the tenant residing at the foreclosed property  
14 has been the victim of domestic violence during the ninety days  
15 preceding the date the notice of early termination was provided  
16 to the renting party. The notice shall be given at least  
17 fourteen days prior to the early termination date specified in  
18 the notice, which shall be no more than one hundred four days  
19 from the date of the most recent act of domestic violence.

20       Subject to subsections (b) and (c), if a tenant of a  
21 foreclosed property or an immediate family member of the tenant



1 has been the victim of domestic violence and the tenant does not  
2 elect to be released from the rental agreement, the tenant may  
3 require the renting party to change the locks to the foreclosed  
4 property by submitting a request to the renting party to do so.

5 (b) Within three days of the receipt of the request in  
6 subsection (a), the renting party shall change the locks at the  
7 tenant's expense. If the renting party fails to act within the  
8 three-day period, the tenant may change the locks without the  
9 renting party's permission and shall give the renting party a  
10 key to the new locks.

11 (c) If the person who committed domestic violence against  
12 the tenant or immediate family member of the tenant is also a  
13 party to the rental agreement, the locks shall not be changed  
14 unless there is a court order requiring the person to vacate the  
15 foreclosed property and a copy of the order has been furnished  
16 to the renting party.

17 (d) The tenant shall not be required to pay any additional  
18 rent, fees, or security deposit because of the exclusion of the  
19 person who committed domestic violence from the foreclosed  
20 property.



1 (e) The person who committed domestic violence against the  
2 tenant or immediate family member of the tenant shall not be  
3 entitled to any damages or other relief against the renting  
4 party or the tenant who in good faith complies with this  
5 section.

6 §667-J Court order to vacate; domestic violence. (a) If  
7 a court of competent jurisdiction, in an action relating to  
8 domestic violence, has ordered the person who committed domestic  
9 violence against the tenant or immediate family member of the  
10 tenant to vacate the foreclosed property, upon issuance of the  
11 order, neither the renting party nor the tenant shall have any  
12 duty to:

13 (1) Allow the person access to the foreclosed property,  
14 unless the person is accompanied by a law enforcement  
15 officer; or

16 (2) Provide the person with keys to the foreclosed  
17 property.

18 (b) If the person is a party to the rental agreement, then  
19 upon issuance of the court order requiring the person to vacate  
20 the foreclosed property, the person's interest in the tenancy  
21 shall terminate, and the renting party and remaining tenant





1 shall be entitled to any actual damages resulting from that  
2 termination.

3 (c) Any remaining tenant shall not be required to pay any  
4 additional rent, fees, or security deposit because of the  
5 termination of the person who committed domestic violence's  
6 interest as a tenant of the foreclosed property.

7 **§667-K Other provisions applicable.** All of the provisions  
8 of chapter 667 not inconsistent with this part and which may  
9 appropriately be applied to the persons, circumstances, and  
10 situations in a judicial foreclosure of an unoccupied  
11 residential property subject to this part shall be applicable to  
12 the rights and obligations imposed by this part."

13 SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 5. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



1 SECTION 6. In codifying the new sections added by section  
2 3 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 7. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2050.



**Report Title:**

Unoccupied Residential Property; Zombie Foreclosure

**Description:**

Imposes fines on a homeowner, foreclosing party, or prevailing purchaser in foreclosure actions when a vacant residential property subject to foreclosure remains unoccupied during the foreclosure process. Establishes conditions under which a property may be rented. (HB1557 HD1)

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

