

A Bill for an Act Relating To Appellate Jurisdiction.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the different orders from which appeals may and, indeed, must be taken in a foreclosure case have been characterized in the past as “traps for the unwary.” Sturkie v. Han, 2 Haw. App. 140, 147, 627 P.2d 296 (1981). For more than the thirty years, the appellate courts have been analyzing their jurisdiction over the various stages of the foreclosure process. One example of this is MDG Supply v. Diversified Inv., 51 Haw. 375, 463 P.2d 525 (1969).

As recently as April, 2002, the Hawaii Supreme Court reconsidered its previous position and held that certain appeals from orders denying a Rule 60(b), Hawaii rules of civil procedure, motion were final and appealable orders. Beneficial Hawai‘i, Inc. v. Casey, Jr. et al. ( Supreme Court No. 22829, April 18, 2002). The court also impliedly held in that case that a Rule 54(b), Hawaii rules of civil procedure, certification of the order confirming sale did not make that order or the judgment entered pursuant to it a final and appealable judgment.

The legislature accordingly believes that it is in the best interest of borrowers, lenders, and their attorneys to codify the practice of appealing from orders in foreclosure actions in this jurisdiction.

The purpose of this Act is to codify appellate jurisdiction in foreclosure actions.

SECTION 2. Chapter 667, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§667- Appeals. (a) Without limiting the class of orders not specified in section 641-1 from which appeals may also be taken, the following orders entered in a foreclosure case shall be final and appealable:

- (1) A judgment entered on a decree of foreclosure, and if the judgment incorporates an order of sale or an adjudication of a movant’s right to a deficiency judgment, or both, then the order of sale or the adjudication of liability for the deficiency judgment also shall be deemed final and appealable;
- (2) A judgment entered on an order confirming the sale of the foreclosed property, if the circuit court expressly finds that no just reason for delay exists, and certifies the judgment as final pursuant to rule 54(b) of the Hawaii rules of civil procedure; and
- (3) A deficiency judgment; provided that no appeal from a deficiency judgment shall raise issues relating to the judgment debtor’s liability for the deficiency judgment (as opposed to the amount of the deficiency judgment), nor shall the appeal affect the finality of the transfer of title to the foreclosed property pursuant to the order confirming sale.

(b) An appeal shall be taken in the manner and within the time provided by the rules of court.”

SECTION 3. Nothing in this Act is intended to or shall be construed to limit appellate jurisdiction over matters properly brought before the appellate courts such as the supreme court’s recognition of appellate jurisdiction over an order denying a motion brought under rule 60(b) of the Hawaii rules of civil procedure, as explained in the Casey decision cited in section 1, or the doctrine that an appeal from a final

judgment incorporates within its ambit all interlocutory orders and rulings leading to that final judgment.

SECTION 4. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>  
New statutory material is underscored.<sup>2</sup>

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

(Approved May 27, 2003.)

**Notes**

1. No bracketed material.
2. Edited pursuant to HRS §23G-16.5.