S.B. NO. 2454

JAN 182008

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

SECTION 1. Section 667-5, Hawaii Revised Statutes, is
amended to read as follows:

3 "§667-5 Foreclosure under power of sale; notice; affidavit 4 after sale. When a power of sale is contained in a mortgage $[\tau]$ 5 and where the mortgagee, or the mortgagee's successor in interest, or any person authorized by the power to act in the 6 7 premises, [may,] desires to foreclose under the power of sale 8 upon a breach of [the] a condition $[\tau]$ of the mortgage, the 9 mortgagee, successor, or person shall be represented by an 10 attorney licensed to practice law and physically located in the 11 State. The attorney shall give notice of the mortgagee's, 12 successor's, or person's intention to foreclose the mortgage and 13 of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three 14 15 publications), the last publication to be not less than fourteen 16 days before the day of sale, in a newspaper having a general 17 circulation in the county in which the mortgaged property lies;

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1	and also give [such] <u>sufficient</u> notices and do all [such]
2	sufficient acts as are authorized or required by the power
3	contained in the mortgage. Copies of the notice shall be filed
4	with the state director of taxation and shall be posted on the
5	premises not less than twenty-one days before the day of sale.
6	The attorney, the mortgagee, successor, or person represented by
7	the attorney shall provide to any person entitled to notice
8	pursuant to this section and sections 667-5.5 and 667-6 and
9	requesting in writing:
10	(1) The amount to cure the default, together with the
11	estimated amount of the foreclosing mortgagee's
12	attorneys' fees and costs, and all other fees and
13	costs estimated to be incurred by the foreclosing
14	mortgagee related to the default prior to the auction
15	within five business days; and
16	(2) The sale price of the mortgaged property once
17	auctioned.
18	Any sale, of which notice has been given as aforesaid, may
19	be postponed from time to time by public announcement made by
20	the mortgagee or by some person acting on the mortgagee's
21	behalf. Upon request by any person entitled to notice pursuant
22	to this section and section 667-5.5 and 667-6, the mortgagee or
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1	person acting on the mortgagee's behalf shall provide
2	information on the date and time of the postponed auction or
3	notice of cancellation if the auction is canceled. The
4	mortgagee shall, within thirty days after selling the property
5	in pursuance of the power, file a copy of the notice of sale and
6	the mortgagee's affidavit, setting forth the mortgagee's acts in
7	the premises fully and particularly, in the bureau of
8	conveyances.
9	The affidavit and copy of the notice shall be recorded and
10	indexed by the registrar, in the manner provided in chapter 501
11	or 502, as the case may be.
12	This section is inapplicable if the mortgagee is
13	foreclosing as to personal property only."
14	SECTION 2. Section 667-7, Hawaii Revised Statutes, is
15	amended to read as follows:
16	"§667-7 Notice, [construction,] contents; affidavit. [The
17	true intent and meaning of section 667-5 is that the] The notice
18	of intention of foreclosure [may also] shall contain a
19	description of the mortgaged property and a statement of the
20	time and place proposed for the sale thereof at any time after
21	the expiration of four weeks from the date when first
22	advertised[; and also that the]. The affidavit contemplated by
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1 section 667-5 may lawfully be made by any person duly authorized to act for the mortgagee, and in such capacity conducting the 2 3 foreclosure." 4 SECTION 3. Section 667-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows: 5 When the mortgagor or the borrower has breached the 6 "(a) 7 mortgage agreement, and when the foreclosing mortgagee intends 8 to conduct a power of sale foreclosure under this part, the foreclosing mortgagee shall prepare a written notice of default 9 addressed to the mortgagor, the borrower, and any guarantor. 10 The notice of default shall state: 11 The name and address of the current mortgagee; 12 (1)13 (2)The name and last known address of the mortgagor, the 14 borrower, and any quarantor; The address or a description of the location of the 15 (3)mortgaged property, and the tax map key number of the 16 17 mortgaged property; The description of the default, and if the default is 18 (4)19 a monetary default, an itemization of the delinquent amount shall be given; 20 21 (5)The action that must be taken to cure the default, including the amount to cure the default, together 22 2008-0768 SB SMA.doc

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1 with the estimated amount of the foreclosing 2 mortgagee's attorney's fees and costs, and all other 3 fees and costs estimated to be incurred by the 4 foreclosing mortgagee related to the default by the 5 deadline date: The date by which the default must be cured, which 6 (6) 7 deadline date shall be at least sixty days after the date of the notice of default; 8 9 (7)That if the default is not cured by the deadline date stated in the notice of default, the entire unpaid 10 11 balance of the moneys owed to the mortgagee under the 12 mortgage agreement will be due, that the mortgagee 13 intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any 14 15 court action and without going to court, and that the mortgagee or any other person may acquire the 16 17 mortgaged property at the public sale; and The name, address [in the State], including electronic 18 (8)19 address, and the telephone number [in the State] of the [person] attorney licensed to practice law and 20 physically located in the State representing the 21 22 foreclosing mortgagee."

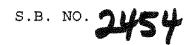


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1	SECTION 4. Section 667-28, Hawaii Revised Statutes, is
2	amended by amending subsection (a) to read as follows:
3	"(a) The public sale may be either postponed or canceled
4	by the foreclosing mortgagee. Notice of the postponement or the
5	cancellation of the public sale shall be announced by the
6	foreclosing mortgagee at the date, time, and place of the last
7	scheduled public sale $[-]$ and also, provided upon request, to any
8	other person entitled to receive the notice of default under
9	section 667-22(c)."
10	SECTION 5. Statutory material to be repealed is bracketed
11	and stricken. New statutory material is underscored.
12	SECTION 6. This Act shall take effect upon its approval.
13	INTRODUCED BY: Runeus. Koht B/R

INTRODUCED BY: 1





Report Title:

NonJudicial Foreclosures; Access to Information

Description:

Requires a mortgagee to provide the telephone number of an attorney located and licensed in Hawaii as the contact individual, and authorizes this individual to provide information to qualified callers.

