

TESTIMONY IN SUPPORT OF THE INTENT OF  
HB202 - RELATING TO FORECLOSURES

February 23, 2009 at 2:00 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committees on Consumer Protection and Judiciary on HB202- Relating to Foreclosure, supporting the intent of the bill, but requesting amendments.

While we believe that this bill provides crucial amendments necessary to protect tenants who are renting properties being foreclosed on, it requires amendments for both clarity and to ensure further protections.

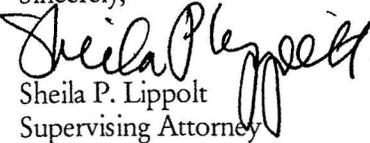
Specifically, we recommend that:

- (1) All protections in the current landlord-tenant code remain for both landlords and tenants with foreclosed properties and as such, the newly added section §521- 44(f) be deleted, but that "successor-in-interest" be included throughout the statute where "landlord" appears.
- (2) Protections be added to the notice requirements whereby landlords who know that they are facing foreclosure be required to disclose such information to tenants with whom they secure leases with.
- (3) Clarifications be inserted to reflect who rent shall be paid to during the period of foreclosure sale and following such sale.
- (4) Provisions be made such that a tenant may use their security deposit for their last month's rent with the prior landlord such that neither tenant or successor-in-interest in without a security deposit.

Attached you will find a draft bill with suggested changes highlighted.

Thank you for this opportunity to testify.

Sincerely,

  
Sheila P. Lippolt  
Supervising Attorney  
Housing Unit

**LATE TESTIMONY**

**Report Title:**

Landlord Tenant; Mortgage Foreclosures; Tenant Notification

**Description:**

Provides for notice to tenants of rental properties that are foreclosed upon. (HB202 HD1)

HOUSE OF REPRESENTATIVES  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

**H.B. NO.** 202  
H.D. 1

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# A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

SECTION 1. Chapter 521, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§521- Foreclosure; notice to tenant. (a) Before the commencement of a tenancy, the landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing if the dwelling unit is the subject of a pending foreclosure action pursuant to chapter 667.

(b) A successor-in-interest shall give written notice to a tenant or subtenant in possession of a rental housing unit to vacate the property within forty-five days from the date the notice is delivered to the tenant or subtenant, pursuant to

subsection (c), before the tenant or subtenant may be removed from the property.

(c) The notice required in subsection (a) and (b) may be delivered by any of the following means:

- (1) By delivering a copy to the tenant personally;
- (2) If the tenant is absent from the tenant's residence or usual place of business, by leaving a copy of the notice with a person of suitable age and discretion at either place and mailing a copy of the notice to the tenant at the tenant's place of residence; or
- (3) If the tenant's whereabouts cannot be ascertained or a person of suitable age or discretion cannot be found, then by affixing a copy of the notice in a conspicuous place at the rental housing unit and mailing a copy of the notice to the tenant or current occupant at the rental housing unit. Service upon a subtenant may be made in the same manner."

SECTION 2. Section 521-71, Hawaii Revised Statutes, is amended to read as follows:

**"§521-71 Termination of tenancy; landlord's ~~and successor-in-interest's~~ remedies for holdover tenants[-]; foreclosure.**

(a) When the tenancy is month-to-month, the landlord ~~or successor-in-interest~~ may terminate the ~~tenancy (rental agreement)~~ by notifying the tenant, in writing, at least forty-

five days in advance of the anticipated termination. When the landlord ~~or successor-in-interest~~ provides notification of termination, the tenant may vacate at any time within the last forty-five days of the period between the notification and the termination date, but the tenant shall notify the landlord or ~~successor-in-interest~~ of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.

(b) When the tenancy is month-to-month, the tenant may terminate the rental agreement by notifying the landlord ~~or successor-in-interest~~, in writing, at least twenty-eight days in advance of the anticipated termination. When the tenant provides notice of termination, the tenant shall be responsible for the payment of rent through the twenty-eighth day.

(c) Before a landlord or ~~successor-in-interest~~ terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A or 514B, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued

shall be in writing. When the landlord or ~~successor-in-interest~~ provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date, but the tenant shall notify the landlord or ~~successor-in-interest~~ of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.

(d) When the tenancy is less than month-to-month, the landlord, ~~the successor-in-interest~~ or tenant may terminate the rental agreement by notifying the other at least ten days before the anticipated termination.

(e) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a), (b), (c), or (d) or by the exercise by the landlord or the ~~successor-in-interest~~ of a right to terminate given under this chapter, if the tenant continues in possession after the date of termination without the landlord's or ~~successor-in-interest's~~ consent, the tenant may be liable to the landlord or the ~~successor-in-interest~~ for a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession. The landlord or ~~successor-in-interest~~ may bring a summary proceeding for recovery of the

possession of the dwelling unit at any time during the first sixty days of holdover. [~~Should~~] If the landlord ~~or successor-in-interest~~ [~~fail~~] fails to commence summary possession proceedings within the first sixty days of the holdover, in the absence of a rental agreement, a month-to-month tenancy at the monthly rent stipulated in the previous rental agreement shall prevail beginning at the end of the first sixty days of holdover.

~~(f) Before a successor in interest to a foreclosed property may terminate a tenancy under subsection (a), (c), or (d) that is month-to-month or less than month-to-month and commence a summary proceeding for possession, the successor in interest shall notify the tenant of the foreclosure. Notice shall be given at least forty-five days prior to the date of the summary proceeding for possession. Notwithstanding subsection (e), after giving notice under this subsection, for each day the tenant remains in possession after termination of the rental agreement under subsection (a), (c), or (d) and to the date of commencement of the summary proceeding for possession, the tenant may be liable to the successor in interest for a sum not to exceed the monthly rent under the rental agreement and any other charges specified under the terms of the rental agreement, computed and prorated on a daily basis. Thereafter, the tenant may be liable to the successor in interest for the sums~~

~~authorized under subsection (c) for each day the tenant remains in possession.~~

As used in this subsection, "successor-in-interest" means a person who acquired an interest in the property through a foreclosure.

(f) ~~[(f)]~~ (g) Any notice of termination initiated for the purposes of evading the obligations of the landlord or the successor-in-interest under subsections 521-21(d) or (e) shall be void."

(g) Remedies. If a landlord or a successor-in-interest fails to provide the written notices as required by section 521- , a tenant may recover, in addition to any other remedy under law:

- (1) the greater of actual damages or one month's rent plus the security deposit amount and reasonable attorney's fees; or
- (2) Obtain injunctive relief.

SECTION 3. Section 521-21, Hawaii Revised Statutes, is amended to add the following section:

(g) Where a property is being foreclosed upon, rent shall be paid as follows: (1) during the pendency of a sale, rent will continue to be paid to the landlord with whom the tenant has the lease; or (2) upon the approval of a sale at auction by a court pursuant to part I of

chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, notice shall be provided to the tenant by both the landlord and the successor-in-interest as to who and where the rent shall be directed.

SECTION 4. Section 521-44, Hawaii Revised Statutes, is amended to add the following section:

( ) Upon notice of approval of a sale at auction or by a court pursuant to part I of chapter 667, or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, the owner shall transfer to the new owner the security deposit previously paid by the tenant, if the security deposit is not transferred the tenant may use the previously paid security deposit as a credit toward one month's rent with the owner.

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

"§667-5 Foreclosure under power of sale; notice; affidavit after sale. (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee's successor in interest, or any person authorized by the power to act in the premises[7] desires to foreclose under power of sale upon breach

of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

- (1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and
- (2) Give any notices and do all acts as are authorized or required by the power contained in the mortgage.

(b) Copies of the notice required under subsection (a)

shall be:

- (1) Filed with the state director of taxation; and
- (2) Posted on the premises not less than twenty-one days before the day of sale.

(c) Upon the request of any person entitled to notice pursuant to this section and sections 667-5.5 and 667-6, the attorney, the mortgagee, successor, or person represented by the attorney shall disclose to the requestor the following information:

- (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and
- (2) The sale price of the mortgaged property once auctioned.

(d) A tenant in possession of a mortgaged property shall be notified fifteen days before the actual sale of the mortgaged property.

~~[(d)]~~ (e) Any sale, of which notice has been given as ~~[aforesaid,~~ provided in this section, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf. Upon request made by any person who is entitled to notice pursuant to section 667-5.5 or 667-6, or this section, the mortgagee or person acting on the mortgagee's behalf shall provide the date and time of a postponed auction~~[7]~~ or, if the auction is canceled, information that the auction was canceled. The mortgagee, within thirty days after selling the property in pursuance of the power, shall file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.

~~(e)~~ (f) The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

~~(f)~~ (g) This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

