
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. The legislature finds that the Report of the
2 Permanent Editorial Board for the Uniform Commercial Code
3 regarding the Application of the Uniform Commercial Code to
4 Selected Issues Relating to Mortgage Notes, dated November 14,
5 2011, notes on page 12, footnote 43, that:

6 Moreover, even if the holder [of a mortgage note] had
7 an attached security interest in the note and, thus,
8 had a security interest in the mortgage, this would
9 not, of itself, mean that the holder could enforce the
10 mortgage without a recordable assignment of the
11 mortgage to the holder. Whatever steps are required
12 in order to enforce a mortgage in the absence of a
13 recordable assignment are the province of real
14 property law.

15 Furthermore, the report states on page 13 that section
16 9-203(g) of the Uniform Commercial Code, regarding the
17 attachment of a security interest, does not determine "the



1 effect of recordation or non-recordation in the real property
2 recording system on enforcement of the mortgage." The report
3 also notes on page 13, footnote 46, that the article on secured
4 transactions "does not determine who has the power to release a
5 mortgage of record. That issue is determined by real-property
6 law."

7 Nonetheless, in a recent ruling of the Hawaii intermediate
8 court of appeals in *Bank of New York Mellon v. Rumbawa*, CAAP-15-
9 0000024 (Haw. App. Feb. 4, 2016), dealing with mortgage
10 foreclosure by action, the court ignored the province of real
11 property law, including the issue of a recordable assignment of
12 the mortgage to the holder, as well as the law on secured
13 transactions from the Uniform Commercial Code. Instead, the
14 court looked only to the law on negotiable instruments and held
15 in part that, in order to enforce a note and mortgage under
16 Hawaii law, it is sufficient to merely show that the creditor is
17 in possession of the note. Moreover, the court stated that a
18 creditor is not required to prove the validity of every transfer
19 in the chain of title before the creditor may foreclose on a
20 property.



1 The purpose of this Act is to override the ruling in *Bank*
2 *of New York Mellon v. Rumbawa* by prohibiting a person who is
3 entitled to enforce a mortgage note as a negotiable instrument
4 from also foreclosing on the property in a foreclosure by action
5 unless the person is the owner, as opposed to a holder, of the
6 mortgage note.

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

10 "§667- Action on a mortgage note that is a negotiable
11 instrument; owner of the mortgage note. (a) No person who is
12 entitled to enforce a mortgage note as a negotiable instrument
13 under section 490:3-301 may bring a foreclosure by action to
14 enforce the mortgage and foreclose on a property unless the
15 person establishes that the person is the owner of the mortgage
16 note.

17 (b) No person shall be deemed the owner of the mortgage
18 note unless the person:

19 (1) Proves the validity of every transfer in the chain of
20 title from the original creditor; and



1 (2) Holds an assignment of the mortgage that has been duly
2 registered in the land court pursuant to chapter 501
3 or recorded in the bureau of conveyances pursuant to
4 chapter 502, as the case may be.

5 (c) Proof that the person is the holder of the mortgage
6 note shall not by itself constitute proof that the person is
7 also the owner of the mortgage note.

8 (d) In case of a conflict between this section and section
9 490:3-301, 490:9-203(g), or 490:9-308(e), or any other provision
10 of chapter 490, this section shall prevail."

11 SECTION 3. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 4. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Foreclosure by Action; Negotiable Instruments; Secured
Transactions

Description:

Prohibits a person who is entitled enforce a mortgage note as a negotiable instrument from also foreclosing on the property in a foreclosure by action unless the person is the owner, as opposed to a holder, of the mortgage note. (HB1957 HD1)

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