
A BILL FOR AN ACT

RELATING TO FORECLOSING ON MORTGAGED PROPERTY.

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

1 SECTION 1. The Legislature finds that the state of Hawaii
2 as one of the highest cost of living among the country. The
3 median cost of a single-family home recently exceeded one
4 million dollars, and where the average energy bill is about \$50
5 more than the national average. As recently as 2016, a survey
6 revealed that Hawaii is the number one state where people are
7 most likely to live paycheck to paycheck.

8 The Legislature further find that periods of health
9 emergencies, such as the COVID-19 pandemic, puts additional
10 strain on the already-precarious living situation.

11 The purpose of this Act is to provide safety and security
12 for the residents of Hawaii during an emergency time period, by
13 prohibiting mortgage lenders from foreclosing on residential
14 properties during public health emergencies.

15 SECTION 2: Chapter 127A, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to be read as follow: [§127A-30] Rental, mortgage



1 payments, or sale of essential commodities during a state of
2 emergency; prohibition against price increases. (a) Whenever
3 the governor declares a state of emergency for the entire State
4 or any portion thereof, or a mayor declares a local state of
5 emergency for the county or any portion thereof, or when the
6 State, or any portion thereof, is the subject of a severe
7 weather warning or a public health emergency:

8 (1) There shall be prohibited any increase in the selling
9 price of any commodity, whether at the retail or
10 wholesale level, in the area that is the subject of
11 the proclamation or the severe weather warning; and

12 (2) There shall be prohibited any foreclosure of mortgaged
13 property for reason of failure to pay rent on account
14 of the state of emergency or public health crisis; and

15 ~~+(2)+~~ (3) No landlord shall terminate any tenancy for a
16 residential dwelling unit in the area that is the
17 subject of the proclamation or the severe weather
18 warning, except for a breach of a material term of a
19 rental agreement or lease, or if the unit is unfit for
20 occupancy as defined in this chapter; provided that:



1 (A) Nothing in this chapter shall be construed to
2 extend a fixed-term lease beyond its termination
3 date, except that a periodic tenancy for a
4 residential dwelling unit may be terminated by
5 the landlord upon forty-five days' written
6 notice:

7 (i) When the residential dwelling unit is sold
8 to a bona fide purchaser for value; or

9 (ii) When the landlord or an immediate family
10 member of the landlord will occupy the
11 residential dwelling unit; or

12 (B) Under a fixed-term lease or a periodic tenancy,
13 upon forty-five days' written notice, a landlord
14 may require a tenant or tenants to relocate
15 during the actual and continuous period of any
16 repair to render a residential dwelling unit fit
17 for occupancy; provided that:

18 (i) Reoccupancy shall first be offered to the
19 same tenant or tenants upon completion of
20 the repair;



(ii) The term of the fixed-term lease or periodic tenancy shall be extended by a period of time equal to the duration of the repair; and

(iii) It shall be the responsibility of the tenant or tenants to find other accommodations during the period of repair.

(b) Notwithstanding this section, any additional operating expenses incurred by the seller or landlord because of the emergency or disaster or the severe weather, and which can be documented, may be passed on to the consumer. In the case of a residential dwelling unit, if rent increases are contained in a written instrument that was signed by the tenant prior to the declaration or severe weather warning, the increases may take place pursuant to the written instrument.

(c) The prohibitions under subsection (a) shall remain in effect until twenty-four hours after the severe weather warning is canceled by the National Weather Service; or in the event of a declaration, the later of a date specified by the governor or mayor in the declaration or ninety-six hours after the effective date and time of the declaration, unless such prohibition is



1 continued by a supplementary declaration issued by the governor
2 or mayor. Any proclamation issued under this chapter that fails
3 to state the time at which it will take effect, shall take
4 effect at twelve noon of the day on which it takes effect.

5 (d) In any action against a merchant, landlord, or other
6 business for violation of the price limitations in this section,
7 the defendant shall be deemed not to have violated this section
8 if the defendant proves all of the following:

9 (1) The violation of the price limitation was
10 unintentional;

11 (2) The defendant voluntarily rolled back prices to the
12 appropriate level upon discovering that this section
13 was or may have been violated; and

14 (3) The defendant has instituted a restitution program for
15 all consumers who may have paid excessive prices.

16 (e) Any violation of this section shall constitute unfair
17 methods of competition and unfair and deceptive acts or
18 practices in the conduct of any trade or commerce under section
19 480-2 and shall be subject to a civil penalty as provided in
20 section 480-3.1. Each item sold at a price that is prohibited
21 by this section shall constitute a separate violation.



1 (f) Any landowner or unit owner who would have been
2 foreclosed on but for this section, shall, upon the official
3 declaration by the Governor or mayors that the emergency period
4 or public health crisis is over, pay back the outstanding amount
5 owed within a five-year period.

6 [~~(f)~~] (g) As used in this section:

7 "Breach of a material term" means the failure of a party to
8 perform an obligation under the rental agreement or lease, which
9 constitutes the consideration for entering into the contract and
10 includes the failure to make a timely payment of rent.

11 "Commodity" means any good or service necessary for the
12 health, safety, and welfare of the people of Hawaii; provided
13 that this term shall include, but not be limited to: materials;
14 merchandise; supplies; equipment; resources; and other articles
15 of commerce that shall include food; water; ice; chemicals;
16 petroleum products; construction materials; or residential
17 dwellings.

18 "Fixed-term lease" means a lease for real property that
19 specifies its beginning date and its termination date as
20 calendar dates, or contains a formula for determining the
21 beginning and termination dates; and the application of the



1 formula as of the date of the agreement will produce a calendar
2 date for the beginning and termination of the lease.

3 "Periodic tenancy" means a tenancy wherein real property is
4 leased for an indefinite time with monthly or other periodic
5 rent reserved. A periodic tenancy may be created by express
6 agreement of the parties, or by implication upon the expiration
7 of a fixed-term lease when neither landlord nor tenant provides
8 the other with written notice of termination and the tenant
9 retains possession of the premises for any period of time after
10 the expiration of the original term.

11 "Unfit for occupancy" means that a residential dwelling
12 unit has been damaged to the extent that the appropriate county
13 agency determines that the unit creates a dangerous or
14 unsanitary situation and is dangerous to the occupants or to the
15 neighborhood."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on January 1, 2023.

INTRODUCED BY:



JAN 24 2022



H.B. NO. 2009

Report Title:

Prohibiting Foreclosures during Public Health Emergencies

Description:

Seeks to prohibit under legal penalties the foreclosure of rental properties, both residential and commercial, during a state of emergency for public health crises.

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