

ACT 82

H.B. NO. 785

A Bill for an Act Relating to Mortgage Foreclosures.

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

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

“**§667-A Definitions.** For the purposes of sections 667-B to 667-E, “time share interest” shall have the same meaning as in section 514E-1.

§667-B Time share interest foreclosure under power of sale; notice; affidavit after sale. (a) When a power of sale is contained in a mortgage of a time share interest, the mortgagee or the mortgagee’s successor in interest or any person authorized by the power to act in the premises, upon a breach of the condition, may foreclose upon the mortgage by:

- (1) Giving notice of the intention to foreclose the mortgage, and of the sale of the mortgaged time share interest by:
 - (A) Certified mail, return receipt requested, to the mortgagor at the mortgagor’s last known address, for mortgagors whose address is within the United States; or

- (B) Mail to the mortgagor at the mortgagor's last known address, for mortgagors whose address is outside the United States; and
 - (C) Publication 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 of general circulation in the county in which the mortgaged time share interest lies; and
- (2) Giving such notices and do all such acts as are authorized or required by the power contained in the mortgage.

Copies of the notice shall be filed with the state director of taxation and shall be posted on the premises of the time share interest not less than twenty-one days before the day of sale.

(b) The day of sale may be at any time after four weeks from the date of publication of the first notice pursuant to subsection (a)(1). Any sale of which notice has been given pursuant to subsection (a) may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf.

(c) Within thirty days after selling the time share interest pursuant to the power of sale, the mortgagee shall file a copy of the notice of sale and the mortgagee's affidavit in the bureau of conveyances. The affidavit may lawfully be made by any person duly authorized to act for the mortgagee and in such capacity conducting the foreclosure, and shall set forth the mortgagee's acts in the time share interest fully and with particularity. The notice may contain a description of the mortgaged time share interest and the time and place proposed for its sale.

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

§667-C Notice to mortgage creditors. (a) A mortgage creditor having a mortgage lien on a time share interest who desires notice that another mortgage creditor having a mortgage lien on the time share interest intends to foreclose and sell the mortgaged time share interest pursuant to the power of sale under section 667-B, may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee's intention to foreclose the mortgage under section 667-B. The request for notice:

- (1) May be submitted any time after the recordation or filing of the subject mortgage at the bureau of conveyances or the land court, but shall be submitted prior to completion of publication of notice of the intention to foreclose the mortgage and of the sale of the mortgaged time share interest;
- (2) Shall be signed by the mortgage creditor desiring to receive notice, or its authorized representative; and
- (3) Shall specify the name and address of the person to whom the notice is to be mailed.

(b) The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors not less than seven calendar days prior to the day of sale.

(c) No request for a copy of any notice pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to the time share interest or be deemed notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the time share interest described in the mortgage referred to therein.

§667-D Affidavit as evidence. If it appears by the affidavit filed under section 667-B(c) that the affiant has in all respects complied with the requirements

of the power of sale and section 667-B in relation to all things to be done by the affiant before selling the time share interest, a certified copy of the record thereof shall be admitted as evidence that the power of sale was duly executed.

§667-E Application of time share interest power of sale requirements. The requirements of sections 667-B to 667-D shall apply only to time share interest mortgages, loans, agreements, and contracts that contain the power of sale.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 2006.

(Approved May 27, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.