

ACT 138

S.B. NO. 2454

A Bill for an Act Relating to Mortgage Foreclosures.

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:

“§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, ~~[or]~~ the mortgagee’s successor in interest, or any person authorized by the power to act in the premises, ~~[may, upon a breach of the condition, give]~~ 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 [also give such]
- (2) Give any notices and do all [such] acts as are authorized or required by the power contained in the mortgage.
 - (b) Copies of the notice required under subsection (a) shall be [filed]:
 - (1) Filed with the state director of taxation [and shall be posted]; 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) Any sale, of which notice has been given as aforesaid, 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, or if the auction is cancelled, information that the auction was cancelled. The mortgagee [shall,] 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) 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) This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 2. Section 667-7, Hawaii Revised Statutes, is amended to read as follows:

"§667-7 Notice[; construction,] contents; affidavit. (a) The [true intent and meaning of section 667-5 is that the] notice of intention of foreclosure [may also] shall contain [a]:

- (1) A description of the mortgaged property [and a]; and
- (2) A statement of the time and place proposed for the sale thereof at any time after the expiration of four weeks from the date when first advertised[; and also that the].

(b) The affidavit [contemplated by] described under section 667-5 may lawfully be made by any person duly authorized to act for the mortgagee, and in such capacity conducting the foreclosure."

SECTION 3. Section 667-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the mortgagor or the borrower has breached the mortgage agreement, and when the foreclosing mortgagee intends to conduct a power of sale fore-

closure under this part, the foreclosing mortgagee shall prepare a written notice of default addressed to the mortgagor, the borrower, and any guarantor. The notice of default shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of the mortgagor, the borrower, and any guarantor;
- (3) The address or a description of the location of the mortgaged property, and the tax map key number of the mortgaged property;
- (4) The description of the default, and if the default is a monetary default, an itemization of the delinquent amount shall be given;
- (5) The action that must be taken to cure the default, including the amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorney's fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default by the deadline date;
- (6) The date by which the default must be cured, which deadline date shall be at least sixty days after the date of the notice of default;
- (7) That if the default is not cured by the deadline date stated in the notice of default, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will be due, that the mortgagee intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any court action and without going to court, and that the mortgagee or any other person may acquire the mortgaged property at the public sale; and
- (8) The name, address [~~in the State~~], including electronic address, and [~~the~~] telephone number [~~in the State~~] of the [~~person~~] attorney who is representing the foreclosing mortgagee[-]; provided that the attorney shall be licensed to practice law in the State and physically located in the State."

SECTION 4. Section 667-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The public sale may be either postponed or canceled by the foreclosing mortgagee. Notice of the postponement or the cancellation of the public sale shall be [~~announced~~]:

- (1) Announced by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale[-]; and
- (2) Provided, upon request, to any other person who is entitled to receive the notice of default under section 667-22(c)."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 3, 2008.)