

ACT 181

S.B. NO. 960

A Bill for an Act Relating to Foreclosures.

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

SECTION 1. The legislature finds that one little-known problem of the national foreclosure crisis occurs when banks or other mortgagees walk away from a foreclosure. This problem, sometimes referred to as the “zombie title” problem, occurs when homeowners move out after receiving notice of a foreclosure sale but prior to a public sale, the bank, mortgagee, or other financial institution walks away from the foreclosure process and cancels the sale without notifying the homeowners.

The legislature further finds that homeowners legally own their property and the homeowners’ names remain on the title until the date of public sale. Without a public sale, the foreclosure process is left in limbo. Homeowners may be left with all of the responsibilities for a property but none of the rights that existed prior to the start of the foreclosure process. Unfortunately for homeowners, there are no regulations that require foreclosing mortgagees in a judicial foreclosure to inform a homeowner when the mortgagee decides not to complete the foreclosure. Unsuspecting homeowners may suffer severe financial penalties as a result of canceled foreclosure sales they knew nothing about.

Therefore, the purpose of this Act is to establish a notice of postponement or cancellation of sale requirement under part IA, chapter 667, Hawaii Revised Statutes, relating to judicial foreclosures.

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

“§667- Postponement, cancellation of sale. (a) The public sale may be either postponed or canceled by the court-appointed commissioner. Notice of the postponement or the cancellation of the public sale shall be:

- (1) Announced by the court-appointed commissioner at the date, time, and place of the last scheduled public sale; and
- (2) Provided to:
 - (A) The mortgagor, the borrower, and the foreclosing mortgagee;
 - (B) Any prior or junior creditors who have a recorded lien on the mortgaged property before the commencement of the foreclosure action; and
 - (C) Any party named in the foreclosure action and any prospective bidder who requested notice of the public sale date or any change in the public sale date.

(b) If there is a postponement of the public sale of the mortgaged property, the court-appointed commissioner shall have a new public notice of the public sale published once in the format described in section 667-20. The new public notice shall state that it is a notice of a postponed sale. The public sale shall take place no sooner than fourteen days after the date of the publication of the new public notice. Not less than fourteen days before the rescheduled date of the public sale, a copy of the new public notice of the rescheduled public sale shall be posted on the mortgaged property or on another real property of which the mortgaged property is a part, and it shall be mailed or delivered to the mortgagor, the borrower, the foreclosing mortgagee, and any other person entitled to receive notification of the foreclosure action under subsection (a)(2).

(c) Upon the fourth postponement of every series of four consecutive postponements, the court-appointed commissioner shall follow all of the public notice of public sale requirements of section 667-20.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.