

ACT 197

H.B. NO. 25

A Bill for an Act Relating to Suspension of Foreclosure Actions by Junior Lienholders.

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

SECTION 1. The legislature recognizes that once a foreclosure action is initiated in the circuit courts, all junior lienholders, including an association, are prohibited from initiating or continuing with a nonjudicial foreclosure.

During the pendency of a judicial foreclosure action in circuit court, which can take years to resolve, and prior to the appointment of a foreclosure commissioner, the property in an association can fall into a state of disrepair and negatively impact not only the neighboring properties but the community at large. In addition, the association's fiscal solvency is burdened by being unable

to collect maintenance fees from the empty and not foreclosed unit, a cost which is then shared by the other homeowners.

In order to minimize property damage and allow associations an opportunity to remain fiscally viable during a pending foreclosure, this Act allows the associations to commence or continue with a nonjudicial foreclosure even if the lender has filed for foreclosure. This Act also reserves the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process in situations where an association forecloses on a unit occupied by one or more owner-occupant mortgagors for whom the unit is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served and the mortgagee subsequently forecloses its lien on the same property.

SECTION 2. Section 667-37, Hawaii Revised Statutes, is amended to read as follows:

**“§667-37 Judicial action of foreclosure before public sale.** This part shall not prohibit the foreclosing mortgagee, or any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-23, from filing an action for the judicial foreclosure of the mortgaged property in the circuit court of the circuit where the mortgaged property is located; provided that the action is filed before the public sale is held. ~~[The power of sale foreclosure process shall be stayed during the pendency of the circuit court foreclosure action.]”~~

SECTION 3. Section 667-57, Hawaii Revised Statutes, is amended to read as follows:

**“§667-57 Suspension of foreclosure actions by junior lienholders.** (a) Upon initiation of a foreclosure action pursuant to part IA or part II by a foreclosing mortgagee, no junior lienholder, except for an association, shall be permitted to initiate or continue a nonjudicial foreclosure until the foreclosure initiated by the foreclosing mortgagee has been concluded by a judgment issued by a court pursuant to section 667-1.5, the recording of an affidavit after public sale pursuant to section 667-33, or the filing of an agreement under the mortgage foreclosure dispute resolution provisions of section 667-81[-]; provided that if pursuant to part IA or part VI:

(1) An association forecloses on a unit occupied by one or more mortgagors for whom the unit is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served; and  
 (2) The mortgagee subsequently forecloses its lien on the same property, those mortgagors shall be deemed to be owner-occupants, as defined in section 667-1, for the purpose of section 667-38 and shall retain their right to require the foreclosing mortgagee to participate in the procedures established under part V, notwithstanding the association's foreclosure.

(b) Upon initiation of a foreclosure action pursuant to part II by a foreclosing mortgagee, no junior lienholder, except for an association, shall be permitted to initiate or continue a nonjudicial foreclosure during the pendency of a stay pursuant to section 667-83; provided that a junior lienholder may initiate or continue with a nonjudicial foreclosure if:-

(4) ~~The] the~~ junior lien foreclosure was initiated before the foreclosure action by the foreclosing mortgagee[-; or

- (2) ~~The junior lienholder is an association and has not been provided notice of the foreclosure action, pursuant to section 667-21.5, or has not received written notification of a case opening pursuant to section 667-79.]~~

and if pursuant to part IA or part VI:

- (1) An association forecloses on a unit occupied by one or more mortgagors for whom the unit is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served; and
- (2) The mortgagee subsequently forecloses its lien on the same property, those mortgagors shall be deemed to be owner-occupants, as defined in section 667-1, for the purpose of section 667-38 and shall retain their right to require the foreclosing mortgagee to participate in the procedures established under part V, notwithstanding the association's foreclosure."

SECTION 4. Section 667-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The written notification of a case opening under section 667-79 shall operate as a stay of the foreclosure proceeding and may be recorded; provided that:

- (1) The written notification shall not act as a stay on a foreclosure proceeding by an association [~~unless the association has been provided notice pursuant to sections 667-5.5, 667-21.5, or 667-79]; and~~
- (2) The written notification shall not act as a stay on a foreclosure proceeding for the purpose of the date by which the default must be cured pursuant to section 667-22(a)(6).”

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 on July 1, 2013.

(Approved June 25, 2013.)