

JAN 21 2011

---

---

# A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1           SECTION 1. Chapter 487, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "§487-A Foreclosure mediation special fund. (a) There is  
5 created in the state treasury a special fund to be known as the  
6 foreclosure mediation special fund to be expended by the  
7 executive director of the office of consumer protection. All  
8 filing fees collected from foreclosing mortgagees under section  
9 667-C or 667-D to initiate foreclosure proceedings under section  
10 667-5 or 667-22, respectively, shall be deposited into the  
11 special fund. The executive director may use the moneys in the  
12 special fund to defray the costs of foreclosure mediation under  
13 section 667-C or 667-D, as the case may be, including the costs  
14 of reimbursing the services of mediators.

15           (b) The executive director shall prepare and submit an  
16 annual report to the governor and the legislature on the use of  
17 the foreclosure mediation special fund, no later than twenty  
18 days prior to the convening of each regular session.



1           §487-B Foreclosure mediation; duties of the executive  
2 director. With regard to foreclosure mediation under chapter  
3 667, the executive director shall:

4           (1) Maintain a list of mediators to assist mortgagors and  
5 mortgagees in the voluntary resolution of a breach of  
6 the mortgage agreement;

7           (2) Appoint a mediator or mediators from the list of  
8 mediators upon request by either the mortgagee or  
9 mortgagor upon a breach of the mortgage agreement;

10          (3) Reimburse the costs of the mediator or mediators from  
11 the foreclosure mediation special fund; and

12          (4) Prepare a form for the affidavit required for  
13 submission by the mortgagee under section 667-5(a)(3)  
14 or 667-22(d)."

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

18          "§667-C Mediation; required prior to a foreclosure under  
19 power of sale; filing fees. (a) No mortgagee may institute a  
20 foreclosure under power of sale under section 667-5 unless the  
21 mortgagee has engaged in and exhausted mediation efforts with  
22 the mortgagor.



1        (b) When the mortgagor has breached the mortgage  
2 agreement, the mortgagor or foreclosing mortgagee shall request  
3 the executive director of the office of consumer protection to  
4 appoint a mediator or mediators from the list of mediators  
5 maintained by the office of consumer protection to assist in the  
6 voluntary resolution of the breach of the mortgage agreement,  
7 including loan modification and loss mitigation.

8        (c) The mediator may compel the parties to attend  
9 mediation, reasonable in time and frequency, for sixty days  
10 following the breach of the mortgage agreement.

11       (d) If the mortgagee and the mortgagor have not resolved  
12 the breach of the mortgage agreement after the sixty days of  
13 mediation, the mortgagee and the mortgagor may resort to other  
14 remedies that are not prohibited by the mortgage agreement,  
15 including the instituting of foreclosure proceedings under  
16 section 667-5."

17       SECTION 3. Chapter 667, Hawaii Revised Statutes, is  
18 amended by adding a new section to part II to be appropriately  
19 designated and to read as follows:

20       **"§667-D Mediation; required prior to a foreclosure under**  
21 **power of sale; filing fees.** (a) No mortgagee may institute a  
22 power of sale foreclosure under section 667-22 unless the



1 mortgagee has engaged in and exhausted mediation efforts with  
2 the mortgagor.

3 (b) When the mortgagor has breached the mortgage  
4 agreement, the mortgagor or foreclosing mortgagee shall request  
5 the executive director of the office of consumer protection to  
6 appoint a mediator or mediators from the list of mediators  
7 maintained by the office of consumer protection to assist in the  
8 voluntary resolution of the breach of the mortgage agreement,  
9 including loan modification and loss mitigation.

10 (c) The mediator may compel the parties to attend  
11 mediation, reasonable in time and frequency, for sixty days  
12 following the breach of the mortgage agreement.

13 (d) If the mortgagee and the mortgagor have not resolved  
14 the breach of the mortgage agreement after the sixty days of  
15 mediation, the mortgagee and the mortgagor may resort to other  
16 remedies that are not prohibited by the mortgage agreement,  
17 including the instituting of foreclosure proceedings under  
18 section 667-22."

19 SECTION 4. Section 667-5, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) When a power of sale is contained in a mortgage, and  
22 where the mortgagee, the mortgagee's successor in interest, or



1 any person authorized by the power to act in the premises,  
2 desires to foreclose under power of sale upon breach of a  
3 condition of the mortgage[7] and the failure of mediation to  
4 resolve the breach of the condition of the mortgage, the  
5 mortgagee, successor, or person shall be represented by an  
6 attorney who is licensed to practice law in the State and is  
7 physically located in the State. The attorney shall:

8 (1) Give notice of the mortgagee's, successor's, or  
9 person's intention to foreclose the mortgage and of  
10 the sale of the mortgaged property, by publication of  
11 the notice once in each of three successive weeks  
12 (three publications), the last publication to be not  
13 less than fourteen days before the day of sale, in a  
14 newspaper having a general circulation in the county  
15 in which the mortgaged property lies; [~~and~~]

16 (2) Give any notices and do all acts as are authorized or  
17 required by the power contained in the mortgage[7];  
18 and

19 (3) File an affidavit with the executive director of the  
20 office of consumer protection in order to initiate  
21 each foreclosure proceeding under this section;  
22 provided that:



1           (A) Each affidavit shall be accompanied by a filing  
2           fee of not less than \$1,000; and

3           (B) The costs of the filing fee shall not be added to  
4           the unpaid balance of the moneys owed to the  
5           mortgagee under the mortgage agreement."

6           SECTION 5. Section 667-22, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "**§667-22 Notice of default; contents; distribution[-];**

9 **affidavit and filing fees.** (a) When the mortgagor or the  
10 borrower has breached the mortgage agreement[7] and mediation  
11 has failed to resolve the breach of the mortgage agreement, and  
12 when the foreclosing mortgagee intends to conduct a power of  
13 sale foreclosure under this part, the foreclosing mortgagee  
14 shall prepare a written notice of default addressed to the  
15 mortgagor, the borrower, and any guarantor. The notice of  
16 default shall state:

- 17           (1) The name and address of the current mortgagee;
- 18           (2) The name and last known address of the mortgagor, the  
19           borrower, and any guarantor;
- 20           (3) The address or a description of the location of the  
21           mortgaged property, and the tax map key number of the  
22           mortgaged property;



- 1           (4) The description of the default, and if the default is  
2           a monetary default, an itemization of the delinquent  
3           amount shall be given;
- 4           (5) The action that must be taken to cure the default,  
5           including the amount to cure the default, together  
6           with the estimated amount of the foreclosing  
7           mortgagee's attorney's fees and costs, and all other  
8           fees and costs estimated to be incurred by the  
9           foreclosing mortgagee related to the default by the  
10          deadline date;
- 11          (6) The date by which the default must be cured, which  
12          deadline date shall be at least sixty days after the  
13          date of the notice of default;
- 14          (7) That if the default is not cured by the deadline date  
15          stated in the notice of default, the entire unpaid  
16          balance of the moneys owed to the mortgagee under the  
17          mortgage agreement will be due, that the mortgagee  
18          intends to conduct a power of sale foreclosure to sell  
19          the mortgaged property at a public sale without any  
20          court action and without going to court, and that the  
21          mortgagee or any other person may acquire the  
22          mortgaged property at the public sale; and



1 (8) The name, address, including electronic address, and  
2 telephone number of the attorney who is representing  
3 the foreclosing mortgagee; provided that the attorney  
4 shall be licensed to practice law in the State and  
5 physically located in the State.

6 (b) The notice of default shall also contain wording  
7 substantially similar to the following in all capital letters:

8 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE  
9 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY  
10 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION  
11 AND WITHOUT GOING TO COURT.

12 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES. FOR  
13 ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY LICENSED  
14 IN THIS STATE.

15 AFTER THE DEADLINE DATE IN THIS NOTICE, TWO PUBLIC  
16 SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE LENDER  
17 WILL BE HELD, BUT ONLY IF ALL MORTGAGORS (OWNERS) OF  
18 THE PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS AGREE  
19 TO ALLOW TWO OPEN HOUSES BY THE LENDER, ALL OWNERS  
20 MUST SIGN A LETTER SHOWING THEY AGREE. ALL OWNERS  
21 MUST SEND THE SIGNED LETTER TO THIS OFFICE AT THE  
22 ADDRESS GIVEN IN THIS NOTICE.





1           THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED LETTER  
2           BY THE DEADLINE DATE IN THIS NOTICE. THE SIGNED  
3           LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL,  
4           REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND  
5           RETURN RECEIPT REQUESTED.

6           IF THE SIGNED LETTER IS NOT RECEIVED BY THIS OFFICE  
7           BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE SOLD  
8           WITHOUT ANY OPEN HOUSES BEING HELD.

9           EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO  
10          ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE  
11          PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO  
12          ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD  
13          WITHOUT ANY OPEN HOUSES BEING HELD.

14          ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE MAILED  
15          TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED THIS  
16          NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO THIS  
17          OFFICE INFORMING THIS OFFICE OF A DIFFERENT ADDRESS.  
18          THE WRITTEN INSTRUCTIONS MUST BE SENT TO THIS OFFICE  
19          BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL,  
20          POSTAGE PREPAID AND RETURN RECEIPT REQUESTED."

21          (c) The foreclosing mortgagee shall have the notice of  
22          default served on:



- 1 (1) The mortgagor and the borrower;
- 2 (2) Any prior or junior creditors having a recorded lien
- 3 on the mortgaged property before the recordation of
- 4 the notice of default under section 667-23;
- 5 (3) The state director of taxation;
- 6 (4) The director of finance of the county where the
- 7 mortgaged property is located; and
- 8 (5) Any other person entitled to receive notice under
- 9 section 667-5.5.

10 (d) The foreclosing mortgagee shall file an affidavit with  
11 the executive director of the office of consumer protection to  
12 initiate each foreclosure proceeding under this section;  
13 provided that:

- 14 (1) Each affidavit shall be accompanied by a filing fee of
- 15 not less than \$1,000; and
- 16 (2) The costs of the filing fee shall not be added to the
- 17 unpaid balance of the moneys owed to the mortgagee
- 18 under the mortgage agreement."

19 SECTION 6. In codifying the new sections added by sections  
20 1 to 3 of this Act, the revisor of statutes shall substitute  
21 appropriate section numbers for the letters used in designating  
22 the new sections in this Act.

1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.  
4

INTRODUCED BY:

J. Paul Gill

Rosalyn H Baker

JLH

Arind Yajz

B

Will Eger

Clarence A. Smith

Carol Johnson

John D. Jones

Trizanne Chum Oakland

S. S. T.

Michelle Klari

Martin



**Report Title:**

Mortgage Foreclosures; Mediation

**Description:**

Requires foreclosing mortgagees to engage in mediation with the mortgagors prior to initiating non-judicial foreclosure proceedings. Establishes a special fund for mediation costs in the office of consumer protection.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

