
A BILL FOR AN ACT

RELATING TO MORTGAGES.

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

1 SECTION 1. Chapter 506, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§506- Power of sale judgment on mortgage indebtedness;
5 appraisal; fair market value. (a) Whenever a money judgment is
6 sought for the balance due upon an obligation for the payment of
7 which a mortgage with power of sale upon real property or any
8 interest therein was given as security, following the exercise
9 of the power of sale in such mortgage, the plaintiff shall set
10 forth in the complaint the entire amount of the indebtedness
11 which was secured by the mortgage at the time of sale, the
12 amount for which the real property or interest therein was sold,
13 the fair market value thereof at the date of sale, and the date
14 of that sale.

15 (b) Upon the application of either party made at least ten
16 days before the time of trial the court shall, and upon its own
17 motion the court at any time may, appoint a licensed appraiser
18 qualified to appraise the property or the interest therein sold



1 as of the time of sale. The appraiser shall file the appraisal
2 with the clerk and that appraisal shall be admissible in
3 evidence. The appraiser shall take and subscribe an oath to be
4 attached to the appraisal that the appraiser has truly,
5 honestly, and impartially appraised the property to the best of
6 the appraiser's knowledge and ability. Any appraiser so
7 appointed may be called and examined as a witness by any party
8 or by the court itself. The court shall fix the compensation of
9 the appraiser in an amount as determined by the court to be
10 reasonable, but those fees shall not exceed similar fees for
11 similar services in the community where the services are
12 rendered, which may be taxed and allowed in like manner as other
13 costs.

14 (c) Before rendering any judgment, the court shall find
15 the fair market value of the real property, or interest therein
16 sold, at the time of sale. The court may render judgment for
17 not more than the amount by which the entire amount of the
18 indebtedness due at the time of sale exceeded the fair market
19 value of the real property or interest therein sold at the time
20 of sale with interest thereon from the date of the sale;
21 provided that in no event shall the amount of the judgment,
22 exclusive of interest after the date of sale, exceed the



1 difference between the amount for which the property was sold
2 and the entire amount of the indebtedness secured by the
3 mortgage. Any such action shall be brought within three months
4 of the time of sale under the mortgage.

5 (d) No judgment shall be rendered in any such action until
6 the real property or interest therein has first been sold
7 pursuant to the terms of the mortgage, unless the real property
8 or interest therein has become valueless.

9 §506- Deficiency judgment prohibited for certain
10 mortgaged residential property. (a) No deficiency judgment
11 shall lie in any event after a sale of real property or an
12 estate for years therein for failure of the purchaser to
13 complete the purchaser's contract of sale, or under a mortgage
14 given to the vendor to secure payment of the balance of the
15 purchase price of that real property or estate for years
16 therein, or under a mortgage on a residential property for not
17 more than four families given to a lender to secure repayment of
18 a loan which was in fact used to pay all or part of the purchase
19 price of that residential property occupied, entirely or in
20 part, by the purchaser.

21 (b) Where both a chattel mortgage and a mortgage have been
22 given to secure payment of the balance of the combined purchase



1 price of both real and personal property, no deficiency judgment
2 shall lie at any time under any one thereof if no deficiency
3 judgment would lie under the mortgage on the real property or
4 estate for years therein.

5 (c) In all cases where existing mortgages are judicially
6 foreclosed unless a different amount is set up in the mortgage,
7 and in all cases of mortgages executed by the mortgagor, the
8 mortgagor may be required to pay only such amount in attorney's
9 fees for processing the judicial foreclosure as the court may
10 find reasonable and also the actual cost of publishing,
11 recording, mailing, and posting notices, litigation guarantee,
12 and litigation cost of suit.

13 (d) No judgment shall be rendered for any deficiency upon
14 a note secured by a mortgage upon real property or an estate for
15 years therein hereafter executed in any case in which the real
16 property or estate for years therein has been sold by the
17 mortgagee under power of sale contained in the mortgage.

18 (e) No deficiency shall be owed or collected, and no
19 deficiency judgment shall be requested or rendered, for any
20 deficiency upon a note secured by a mortgage for a residential
21 property of not more than four units, in any case in which the
22 mortgagor sells the residential property for a sale price less



1 than the remaining amount of the indebtedness outstanding at the
2 time of sale, in accordance with the written consent of the
3 mortgage holder; provided that the following have occurred:

4 (1) Title has been voluntarily transferred to a buyer by
5 grant deed or by other document of conveyance that has
6 been recorded or filed pursuant to chapter 501 or 502,
7 as applicable; and

8 (2) The proceeds of the sale have been tendered to the
9 mortgagee, beneficiary, or agent of the mortgagee or
10 beneficiary, in accordance with the parties'
11 agreement.

12 (f) In circumstances not described in subsection (e) when
13 a note is not secured solely by a mortgage for a residential
14 property of not more than four units, no judgment shall be
15 rendered for any deficiency upon a note secured by a mortgage
16 for a residential property of not more than four units, if the
17 mortgagor sells the residential property for a sale price less
18 than the remaining amount of the indebtedness outstanding at the
19 time of sale, in accordance with the written consent of the
20 mortgage holder. Following the sale, in accordance with the
21 holder's written consent, the voluntary transfer of title to a
22 buyer by grant deed or by other document of conveyance that has



1 been recorded or filed pursuant to chapter 501 or 502, as
2 applicable, and the tender to the mortgagee, beneficiary, or the
3 agent of the mortgagee or beneficiary of the sale proceeds, as
4 agreed, the rights, remedies, and obligations of any holder,
5 beneficiary, mortgagee, mortgagor, obligor, obligee, or
6 guarantor of the note or mortgage, and with respect to any other
7 property that secures the note, shall be treated and determined
8 as if the residential property had been sold through foreclosure
9 under a power of sale contained in the mortgage for a price
10 equal to the sale proceeds received by the holder in the manner
11 prescribed by chapter 667.

12 (g) A holder of a note shall not require the mortgagor or
13 maker of the note to pay any additional compensation, aside from
14 the proceeds of the sale, in exchange for the written consent to
15 the sale.

16 (h) If the mortgagor commits either fraud with respect to
17 the sale of, or waste with respect to, the real property that
18 secures the mortgage, this section shall not limit the ability
19 of the mortgage holder to seek damages and use existing rights
20 and remedies against the mortgagor or any third party for fraud
21 or waste.



1 (i) This section shall not apply if the mortgagor is a
2 corporation, limited liability company, limited partnership, or
3 political subdivision of the State.

4 (j) Any purported waiver of this section shall be void and
5 against public policy."

6 SECTION 2. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Mortgages; Deficiency Judgments; Purchase Money Mortgages;
Foreclosure Sales; Short Sales; Fair Market Value of Real
Property

Description:

Requires a court to find the fair market value of the real property or interest in real property prior to issuing a money judgment following a power of sale foreclosure. Prohibits deficiency judgments on certain purchase money mortgages, when a mortgagee has elected to foreclose under power of sale, and for certain residential property sold in a short sale. (SD1)

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

