

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO ASSOCIATION ALTERNATIVE POWER OF SALE FORECLOSURE  
PROCESS.

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

1           SECTION 1. The legislature finds that under section  
2 667-92, Hawaii Revised Statutes, an association is permitted to  
3 go to court and continue the association's nonjudicial  
4 foreclosure against a missing owner by serving the owner through  
5 publication, after a hearing before a judge. A judge then  
6 oversees the process of foreclosure with respect to service of  
7 the owner, while allowing the association to continue with its  
8 nonjudicial foreclosure, rather than being forced into a more  
9 expensive and time-consuming judicial foreclosure.

10           However, despite the benefits of this process, the  
11 legislature further finds that the wording of section  
12 667-92(f)(1), Hawaii Revised Statutes, has created a problem.  
13 Some judges have interpreted the language in this paragraph to  
14 mean that only the missing owner and not a missing or defunct  
15 lender that has also disappeared, can be served by publication  
16 in a nonjudicial foreclosure. The result is that the  
17 association can serve the owner by publication in a nonjudicial



1 foreclosure but not a defunct lender, which then forces the  
2 association to switch to a judicial foreclosure to complete the  
3 association's foreclosure.

4 Accordingly, the purpose of this Act is to clarify the  
5 parties that a homeowners association can serve through  
6 publication, after a hearing before a judge, in a nonjudicial  
7 foreclosure proceeding.

8 SECTION 2. Section 667-92, Hawaii Revised Statutes, is  
9 amended by amending subsection (f) to read as follows:

10 "(f) If the association is unable to serve the notice of  
11 default and intention to foreclose on the unit owner or any  
12 other party listed in subsection (e) (2) to (5) within sixty  
13 days, the association may:

14 (1) File a special proceeding in the circuit court of the  
15 circuit in which the unit is located, for permission  
16 to proceed with a nonjudicial foreclosure by serving  
17 the unit owner [~~only~~] or any other party listed in  
18 subsection (e) (2) and (5) by publication and posting;

19 (2) Proceed with a nonjudicial foreclosure of the unit;  
20 provided that if the association proceeds without the  
21 permission of the court, the association shall not be  
22 entitled to obtain a deficiency judgment against the



1 unit owner, and the unit owner shall have one year  
2 from the date the association records the deed in the  
3 nonjudicial foreclosure to redeem the unit by paying  
4 the unit owner's delinquency to the association; or  
5 (3) Take control of the unit if the unit is unoccupied,  
6 after giving notice to the unit owner at the unit  
7 owner's last known address as shown on the records of  
8 the association or as determined by the association as  
9 part of its due diligence to serve notice to the  
10 owner. The association's authority to take control of  
11 the unit pursuant to this paragraph shall be exercised  
12 solely for the purpose of renting the unit to generate  
13 rental income to pay the unit owner's delinquency, and  
14 the association shall acquire no legal title to the  
15 unit. In addition, the association shall credit the  
16 net rental proceeds generated from the rental of the  
17 unit to the owner's delinquency. For purposes of this  
18 paragraph, "net rental proceeds" means the rental  
19 proceeds remaining each month after deducting:  
20 (A) The unit's regular monthly assessments that come  
21 due while the association controls the unit  
22 pursuant to this subsection;



1 (B) Any rental agent commissions; and  
2 (C) Expenses incurred by the association in  
3 maintaining the unit in rentable condition.  
4 If the unit owner pays the full amount of the unit  
5 owner's delinquency to the association, the  
6 association shall return control of the unit to the  
7 unit owner; provided that the full amount of the unit  
8 owner's delinquency shall be calculated by deducting  
9 the total net rental proceeds collected by the  
10 association, if any, from the unit owner's  
11 delinquency."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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

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# S.B. NO. 2482

**Report Title:**

Homeowners Association; Nonjudicial Foreclosure; Publication;  
Alternate Remedies for Failure to Serve

**Description:**

Clarifies the parties that a homeowners association can serve through publication, after a hearing before a judge, in a nonjudicial foreclosure proceeding.

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

