
A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1 SECTION 1. The legislature finds that the Hawaii Revised
2 Statutes require a foreclosing mortgagee or association to
3 publish a public notice of a public sale of a mortgaged
4 property. The law grants the mortgagee or association the
5 option of publishing the notice either:

6 (1) Three times in a newspaper; or

7 (2) On a state website and once in a newspaper.

8 However, the State also finds that while an increasing number of
9 individuals have access to the Internet, not everyone has
10 immediate access. These individuals sometimes miss the
11 publication of a notice when it is posted on a state website and
12 published only once in a newspaper.

13 The legislature also finds that while publication in a
14 newspaper is helpful, many people neither read the newspaper nor
15 the legal notice section of the newspaper regarding nonjudicial
16 foreclosure actions, and this kind of notice may be insufficient
17 to provide adequate consumer protections. The legislature finds



1 that revising posting requirements for nonjudicial foreclosures
2 to include posting of a notice of foreclosure action in a
3 conspicuous place at the property in question will help to
4 bolster consumer protections in these instances.

5 The purpose of this Act is to enhance the transparency of
6 the foreclosure process by requiring every public notice of a
7 public sale to be published three times in a newspaper or posted
8 on a state website and in a conspicuous location on the
9 mortgaged property, even if notice was posted in the newspaper
10 or on a state website.

11 SECTION 2. Section 667-22, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) When the mortgagor or the borrower has breached the
14 mortgage agreement, and when the foreclosing mortgagee intends
15 to conduct a power of sale foreclosure under this part, the
16 foreclosing mortgagee shall prepare a written notice of default
17 and intention to foreclose addressed to the mortgagor, the
18 borrower, and any guarantor. The notice of default and
19 intention to foreclose shall state:

20 (1) The name and address of the current mortgagee;

21 (2) The name and last known address of the mortgagors, the



- 1 borrowers, and any guarantors;
- 2 (3) With respect to the mortgaged property, the address or
3 a description of its location, tax map key number, and
4 certificate of title or transfer certificate of title
5 number if registered in the land court;
- 6 (4) The description of the default or, if the default is a
7 monetary default, an itemization of the delinquent
8 amount;
- 9 (5) The action required to cure the default, including the
10 delinquent amount and the estimated amount of the
11 foreclosing mortgagee's attorney's fees and costs, and
12 all other fees and costs related to the default
13 estimated to be incurred by the foreclosing mortgagee
14 by the deadline date;
- 15 (6) The date by which the default must be cured, which
16 shall be at least sixty days after the date of the
17 notice of default and intention to foreclose;
- 18 (7) A statement that if the default is not cured by the
19 deadline date stated in the notice of default and
20 intention to foreclose, the entire unpaid balance of
21 the moneys owed to the mortgagee under the mortgage



1 agreement will become due, that the mortgagee intends
2 to conduct a power of sale foreclosure to sell the
3 mortgaged property at a public sale without any court
4 action and without going to court, and that the
5 mortgagee or any other person may acquire the
6 mortgaged property at the public sale;

7 (8) A statement that if the default is not cured by the
8 deadline date stated in the notice of default and
9 intention to foreclose, the mortgagee [~~may~~] shall
10 publish the public notice of the public sale in a
11 newspaper of general circulation or on a state
12 website, pursuant to section 667-27(d), and in a
13 conspicuous location on the mortgaged property;

14 (9) The name, address, electronic address, and telephone
15 number of the attorney who is representing the
16 foreclosing mortgagee; provided that the attorney
17 shall be licensed to practice law in the State and
18 physically located in the State; and

19 (10) Notice of the right of the owner-occupant to elect to
20 participate in any other process as established by
21 law."



1 SECTION 3. Section 667-27, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) The foreclosing mortgagee shall have the public
4 notice of the public sale:

5 (1) Printed in not less than seven-point font and
6 published in the classified section of a newspaper
7 that is published at least weekly and having a general
8 circulation in the county in which the mortgaged
9 property is located. The public notice shall be
10 published once each week for three consecutive weeks,
11 constituting three publications. The public sale
12 shall take place no sooner than fourteen days after
13 the date of the publication of the third public notice
14 advertisement; or

15 (2) Not less than twenty-eight days before the date of the
16 public sale, published on a state website at the
17 discretion of the agency that maintains the website;
18 provided that:

19 (A) If the mortgaged property is owned by an owner-
20 occupant, the public notice shall be published on
21 a website maintained by the department. The



1 department shall publish the public notice
2 pursuant to this subparagraph upon satisfaction
3 of the filing requirements of section 667-76(b);
4 and

5 (B) The public notice shall be published at least
6 once in the format described in paragraph (1) at
7 least fourteen days prior to the public sale.

8 In addition to paragraphs (1) or (2), the public notice of
9 the public sale shall be posted in a conspicuous location on the
10 mortgaged property no less than twenty-eight days before the
11 date of the public sale."

12 SECTION 4. Section 667-76, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) A mortgagee who elects to publish a public notice of
15 public sale electronically pursuant to section [~~667-27(d)(2)(A)~~]
16 667-27(d)(2) shall publish the notice by filing the same with
17 the department and paying a filing fee of \$300, which shall be
18 deposited into the mortgage foreclosure dispute resolution
19 special fund established under section 667-86."

20 SECTION 5. Section 667-92, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) When a unit owner has failed to pay an assessment,
2 and when the association intends to conduct a power of sale
3 foreclosure under this part, the association shall prepare a
4 written notice of default and intention to foreclose addressed
5 to the unit owner. The notice of default and intention to
6 foreclose shall state:

7 (1) The name and address of the association;

8 (2) The name and last known address of the unit owners;

9 (3) With respect to the unit, the address or a description
10 of its location, tax map key number, and certificate
11 of title or transfer certificate of title number if
12 registered in the land court;

13 (4) The description of the default or, if the default is a
14 monetary default, an itemization of the delinquent
15 amount;

16 (5) The action required to cure the default, including the
17 delinquent amount and the estimated amount of the
18 association's attorney's fees and costs, and all other
19 fees and costs related to the default estimated to be
20 incurred by the association by the deadline date;



- 1 (6) The date by which the default must be cured, which
2 shall be within sixty days after service of the notice
3 of default and intention to foreclose;
- 4 (7) A statement that if the default is not cured by the
5 deadline date stated in the notice of default and
6 intention to foreclose, the entire unpaid balance of
7 the moneys owed to the association will become due,
8 that the association intends to conduct a power of
9 sale foreclosure to sell the unit at a public sale
10 without any court action and without going to court,
11 and that the association or any other person may
12 acquire the unit at the public sale;
- 13 (8) A statement that if the default is not cured by the
14 deadline date stated in the notice of default and
15 intention to foreclose, the association [~~may~~] shall
16 publish the public notice of the public sale in a
17 newspaper of general circulation or on a state
18 website, pursuant to section 667-96(d) and in a
19 conspicuous location on the unit;
- 20 (9) The name, address, electronic address, and telephone
21 number of the attorney who is representing the



1 association; provided that the attorney shall be
2 licensed to practice law in the State and physically
3 located in the State; and

4 (10) Notice of the right of the unit owner to submit a
5 payment plan within thirty days pursuant to subsection
6 (c)."

7 SECTION 6. Section 667-96, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

9 "(d) The association shall have the public notice of the
10 public sale:

11 (1) Printed in not less than seven-point font and
12 published in the classified section of a newspaper
13 that is published at least weekly and having a general
14 circulation in the county in which the unit is
15 located. The public notice shall be published once
16 each week for three consecutive weeks, constituting
17 three publications. The public sale shall take place
18 no sooner than fourteen days after the date of the
19 publication of the third public notice advertisement;
20 or



1 (2) Not less than twenty-eight days before the date of the
2 public sale, published on a state website at the
3 discretion of the agency that maintains the website;
4 provided that the public notice shall be published at
5 least once in the format described in paragraph (1) at
6 least fourteen days prior to the public sale.

7 In addition to paragraphs (1) or (2), the public notice of
8 the public sale shall be posted in a conspicuous location on the
9 mortgaged property no less than twenty-eight days before the
10 date of the public sale."

11 SECTION 7. Section 667-97, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+] §667-97 [+] Postponement, cancellation of sale. (a)
14 The public sale may be either postponed or canceled by the
15 association. Notice of the postponement or the cancellation of
16 the public sale shall be:

17 (1) Announced by the association at the date, time, and
18 place of the last scheduled public sale; and

19 (2) Provided to any other person who is entitled to
20 receive the notice of default under section 667-92.



1 (b) If there is a postponement of the public sale of the
2 unit, the association shall have a new public notice of the
3 public sale [~~shall be~~] published [~~once in the format~~] and follow
4 all of the public notice of public sale publication requirements
5 described in section [~~667-96.~~] 667-96(d). The new public notice
6 shall state that it is a notice of a postponed sale. The public
7 sale shall take place no sooner than fourteen days after the
8 date of the publication of the new public notice. Not less than
9 fourteen days before the date of the public sale, a copy of the
10 new public notice shall be posted on the unit or on another real
11 property of which the unit is a part, and it shall be mailed or
12 delivered to the unit owner and to any other person entitled to
13 receive notice under section 667-92(e).

14 (c) Upon the fourth postponement of every series of four
15 consecutive postponements, the association shall follow all of
16 the public notice of public sale requirements of section 667-96,
17 including the requirements of mailing and posting under section
18 667-96(c) and of publication under section 667-96(d).

19 (d) The default under the association documents may be
20 cured no later than three business days before the date of the
21 public sale of the unit by paying the entire amount that would



1 be owed to the association if the payments under the association
2 documents had not been accelerated, plus the association's
3 attorney's fees and costs, and all other fees and costs incurred
4 by the association related to the default, unless otherwise
5 agreed to between the association and the unit owner. There is
6 no right to cure the default or any right of redemption after
7 that time. If the default is so cured, the public sale shall be
8 canceled."

9 SECTION 8. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 9. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 10. This Act shall take effect on July 1, 2112.



Report Title:

Foreclosure; Public Notice; Public Sale; Newspapers; Internet

Description:

Requires every public notice of a public sale of mortgaged property to be published three times in a newspaper, on a state website, and in a conspicuous location on the mortgaged property or unit. (HB218 HD1)

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

