
A BILL FOR AN ACT

RELATING TO FORECLOSURE.

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

1 SECTION 1. The purpose of this Act is to expedite the
2 foreclosure process by ensuring initial disclosure of a
3 mortgagee's status and the facts supporting that status, thereby
4 ensuring the availability of documents necessary to the
5 adjudication of the case.

6 SECTION 2. Section 667-18, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[+]~~§667-18~~[+]~~ **Attorney [affirmation] and mortgagee**
9 **affirmations in judicial foreclosure**~~[.—AA]~~; **complaint.** (a) A
10 complaint in a mortgage foreclosure action shall:

11 (1) Contain affirmative allegations expressly made by the
12 mortgagee at the time the proceeding is commenced that
13 the mortgagee is the holder of the loan secured by the
14 mortgage; or

15 (2) Allege with specificity the factual basis by which the
16 mortgagee is entitled to enforce the mortgage under
17 this chapter.



1 (b) If a mortgagee has been delegated the authority to
2 institute a mortgage foreclosure action on behalf of the person
3 entitled to enforce the mortgage, the complaint shall describe
4 the authority of the mortgagee and identify, with specificity,
5 the document that grants the mortgagee the authority to act on
6 behalf of the person entitled to enforce the mortgage.

7 (c) If the mortgagee is in possession of the original
8 promissory note secured by the mortgage, the mortgagee shall
9 file an affidavit executed under penalty of perjury
10 contemporaneously with the filing of the complaint for
11 foreclosure. The affidavit shall state that the mortgagee is in
12 possession of the original promissory note. The affidavit shall
13 set forth the location of the original promissory note, the name
14 and title of the individual giving the certification, the name
15 of the person who personally verified the possession, and the
16 time and date the possession was verified. True and correct
17 copies of the promissory note and any endorsements and allonges
18 on the note shall be attached to the affidavit.

19 (d) If the mortgagee seeks to enforce a lost, destroyed,
20 or stolen instrument, an affidavit executed under penalty of



1 perjury shall be contemporaneously filed with the complaint for
2 foreclosure. The affidavit shall:

3 (1) Detail a clear chain of all endorsements, transfers,
4 or assignments of the instrument that is the subject
5 of the action;

6 (2) Set forth the facts demonstrating that the mortgagee
7 is entitled to enforce a lost, destroyed, or stolen
8 instrument pursuant to section 490:3-309; and

9 (3) Include as exhibits to the affidavit copies of the
10 instrument, audit reports showing receipt of the
11 instrument, or other evidence of the acquisition,
12 ownership, and possession of the instrument as may be
13 available to the mortgagee.

14 Adequate protection as required under section 490:3-309(b) shall
15 be provided before the entry of final judgment.

16 (e) If the mortgagee is represented by an attorney, in
17 addition to the affirmations of the mortgagee required pursuant
18 to this section, the attorney [~~who files a complaint in a~~
19 mortgage foreclosure action] shall affirm in writing, under
20 penalty of perjury, that to the best of the attorney's
21 knowledge, information, and belief the allegations contained in



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1 the complaint are warranted by existing law and have evidentiary
2 support.

3 (f) The court may sanction any mortgagee or attorney who
4 represents a mortgagee for failure to comply with this section.

5 (g) This section shall not be construed to modify any
6 statute or other requirement regarding standing or real parties
7 in interest."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 19 2018



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Report Title:

Mortgage Foreclosure; Attorney; Real Property

Description:

Requires complaints for mortgage foreclosure cases to include various supporting documents demonstrating the authority of the mortgagee to foreclose.

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