

# **PUBLIC INFORMATION NOTICE PURSUANT TO HAWAII REVISED STATUTES SECTION 667-41**

Loan #:

MIN:

Date:

Lender:

Borrower(s):

Property Address:

## **WHAT IS FORECLOSURE?**

This notice informs you regarding a lender's right to foreclose in the event of a default on the loan you have applied for or are considering if your home is used to secure its repayment.

The mortgage agreement or contract that you may enter into states that in the event the amounts due under the loan are not paid when they are due, or for other reasons you do not perform your promises in the note and mortgage, all of which are known as defaults, the lender shall have the option to foreclose the mortgage, which will result in a sale of your home.

The entity or person who holds your mortgage ("Mortgagee") may send you a notice informing you that the Mortgagee is starting foreclosure proceedings. You should not wait for that to happen; take steps to prevent a foreclosure as soon as you are having trouble paying your mortgage. You should contact your lender or your lender's loan servicer, or you may contact a budget and credit counselor or housing counselor, to discuss your situation.

**STEP ONE: NOTICE OF DEFAULT.** The first step in the foreclosure process is the Mortgagee usually sends you a written notice of default, which occurs after you are past due on your mortgage payment. The Mortgagee will tell you in the notice how much time you have to pay the required amount that is past due and, by paying, will return your loan to good standing.

**STEP TWO: PROCEEDING TO FORECLOSURE.** If you do not pay the required amount past due by the deadline in the notice of default, the Mortgagee may elect to proceed to collect the balance due on your loan through foreclosure. In Hawaii, there are two types of

foreclosures: judicial and nonjudicial.

In a JUDICIAL FORECLOSURE, the Mortgagee files a lawsuit against you in order to obtain a court judgment that you owe the balance due under your loan and to obtain an order to sell the property. The initial legal document you will receive in the lawsuit is called the complaint. You should consult an attorney of your choice who can advise you as to the steps needed to protect your rights. Judicial foreclosure involves the sale of the mortgaged property under the supervision of the court. You will receive notice of the foreclosure case hearings and the sale date and the judicial decision is announced after a hearing in court. The sale of the property must be approved by the court before it can be completed.

In a NONJUDICIAL FORECLOSURE, the process follows the procedures spelled out in Chapter 667 of the Hawaii Revised Statutes and in your mortgage. The nonjudicial procedures allow a Mortgagee to foreclose on and sell the property identified in the mortgage without filing a lawsuit or court supervision. This nonjudicial foreclosure is also called a power of sale foreclosure. The Mortgagee starts the process by giving you a written notice of default and of the Mortgagee's intent to sell the property.

After the required time has elapsed, you will be sent a notice of nonjudicial foreclosure sale, which will tell you the date and location of the sale.

In a NONJUDICIAL FORECLOSURE, if you own an interest in the property you may have the right to participate in the Mortgage Foreclosure Dispute Resolution Program or to convert the nonjudicial foreclosure into a judicial foreclosure. The nonjudicial foreclosure may not proceed during the dispute resolution process or after it has been converted to a judicial foreclosure.

**PLEASE NOTE:** Even if a judicial or nonjudicial foreclosure has commenced, you may be able to reinstate the loan and keep your home if you pay the delinquent amount then due and the foreclosure expenses that your Mortgagee has incurred. You must contact the Mortgagee as soon as possible to determine whether reinstatement is possible.

**STEP THREE: PUBLIC SALE.** The sale of a foreclosed home is usually made through a public auction, where the highest bidder who can make a cash deposit of up to 10% of the bid can buy the property. In a judicial foreclosure, the court appoints a third party commissioner to advertise and conduct the sale. In a nonjudicial foreclosure, the

Mortgagee advertises and conducts the sale. In both types of sales, the Mortgagee has the right to buy the property by submitting a credit bid based upon the balance owed on the mortgage, so long as its bid is higher than any other bids. If the Mortgagee buys the property, the Mortgagee has the right to re-sell it in a private sale at a later date.

**STEP FOUR: DISBURSEMENT OF PROCEEDS; POTENTIAL DEFICIENCY JUDGMENT.** After the foreclosure sale is completed, the proceeds are paid out to lien holders, including the Mortgagee, in the order set by law and lastly to you if there are any proceeds left.

In a **JUDICIAL FORECLOSURE**, the court tells the commissioner whom to pay and how much. If the property did not sell for enough to pay off the balance due under your loan, the Mortgagee has the right to ask the court for a deficiency judgment against you for the difference.

In a **NONJUDICIAL FORECLOSURE**, the Mortgagee distributes the proceeds from the sale. If you are an owner-occupant, the law prohibits a deficiency judgment against you unless the debt is secured by other collateral.

**READ THE NOTE AND MORTGAGE CAREFULLY TO UNDERSTAND WHAT IS REQUIRED AND HOW TO AVOID FORECLOSURE, AND CONSULT WITH AN ATTORNEY REGARDING YOUR LEGAL RIGHTS.**

**Acknowledgment**

I/We, the applicant(s) for the aforementioned loan, or the owner(s) of the aforementioned property, hereby acknowledge receipt of this Notice.

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- BORROWER -                      - DATE -

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- BORROWER -                      - DATE -