



LEGAL AID
SOCIETY OF HAWAI'I



ASSOCIATION FORECLOSURE: UNDERSTANDING YOUR RIGHTS AND RESPONSIBILITIES

This brochure contains more detailed information on the rights your homeowner's association has to collect delinquent maintenance fees and foreclose. This brochure may be useful if:

1. Your property is part of a homeowner's or apartment owner's association ("Association");
2. You are behind on your monthly maintenance fees; and/or
3. You are in violation of the association rules and have been contacted by the association's attorney.

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What are my responsibilities to the Association?:

- Pay the monthly fees required by the Association.
- Pay ALL special assessments as required. You do not have a right to withhold payment, even if the Association assessments are in error. If you believe the assessments are incorrect, for any reason, continue paying and consult an attorney.
- Maintain the property in accordance with association rules. You should consult your Association by-laws, house rules, and/or covenants, conditions, and restrictions (“CC&R”), for more information on the maintenance requirements.

Can I dispute Association assessments?:

- You may only dispute an Association assessment(s) if you have first paid the assessment(s) in full. If you do not pay the assessment(s), you are not entitled to any of the remedies below.
- If you have paid the Association assessment(s) you may:
 - Request a written statement with an accounting of all common expenses, penalties, attorney’s fees, and any other expenses included in the assessment(s);
 - Request mediation or arbitration regarding the amount or validity of the assessment(s);
 - or
 - File a complaint in small claims court.



What is a Homeowners' or Apartment Owners' Association?

Homeowners' Associations, commonly referred to as a “HOA”, and Apartment Owners' Association, also known as an “AOAO” are organizations comprised of the unit owners in a condominium, apartment, or cooperative housing project. The Association shares an ownership interest in the common areas of the housing project with the unit owners.

The organization is run by a board of directors. The board of the organization is responsible for the maintenance and repair of common areas and has the authority to assess fees associated with carrying out these responsibilities from unit owners within the project.

The board may collect these fees in the form of regular dues and special assessment fees. Review your Association by-laws for more information.

If a unit owner does not pay the required Association fees, the board of directors may initiate foreclosure proceedings against the unit owner.

What can the Association do if I do not pay an assessment?:

- The Association may cut-off access to all common areas after sixty (60) days written notice;
- File an action in court to recover a monetary judgment;
- If you are renting your unit the Association may collect the assessments directly from your tenant's monthly rent after providing written notice to you. You will not have the right to take any retaliatory action against your tenant for paying the Association directly, the written demand from the Association is a complete defense to eviction for non-payment of rent;



- Foreclose on your unit. (There are two types of foreclosure processes: judicial and non-judicial. Associations in Hawaii primarily foreclose non-judicially, although there are certain restrictions which may prevent use of this method of foreclosure. The differences between the non-judicial and judicial foreclosure processes are discussed at the end of this brochure.); or

- If your unit is unoccupied, the Association may assume control of the unit for the purpose of renting the unit to cover the unpaid assessment(s).

What are the Association's Responsibilities to me if they intend to foreclose?:

- If the Association intends to foreclose on your unit they must give you notice by personally delivering to you or a competent adult member of your household a copy of the Notice of Default and Intent to Foreclose, written contact information for approved housing counselors and

approved budget and credit counselors, an accounting of the delinquent amount, and information on how to cure the default.

- If the Association cannot serve you within sixty (60) days they may:
 - Obtain permission from the court to serve you by publication and mailing;
 - If the unit is unoccupied, mail notice to your last known address and seize control for the purpose of renting the unit. (The unit must be returned once the delinquent amount has been paid);
 - Proceed without giving notice. (By proceeding without giving notice the Association waives the right to collect a deficiency judgment and the unit owner may reclaim the unit by paying the entire delinquent amount before the expiration of one year from the date that the deed of foreclosure sale is recorded).

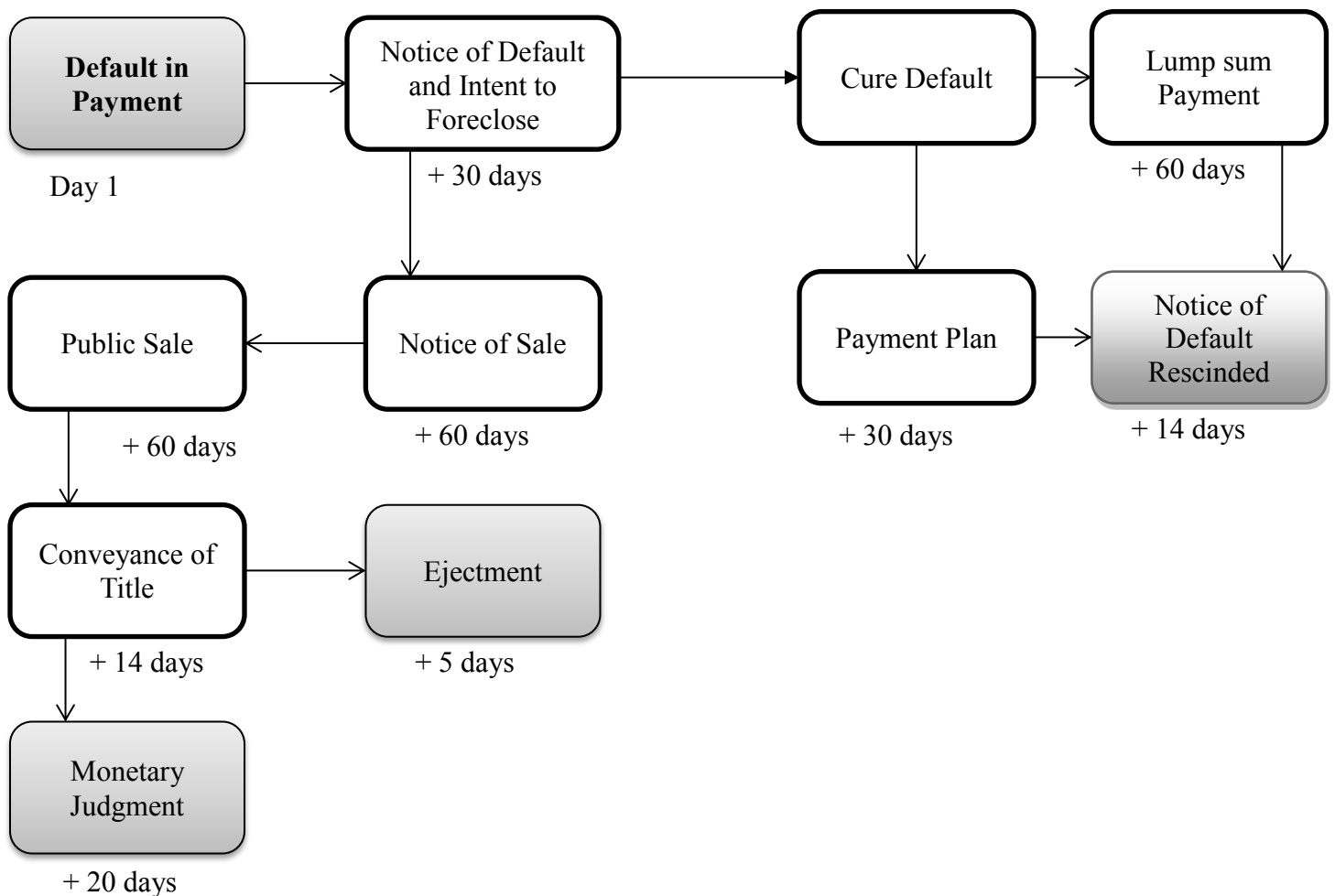
How do I avoid foreclosure if I already received notice from the Association?:

- Once the Notice of Default and Intent to Foreclose has been served you have sixty (60) days to pay the delinquent amount in full. The Association is not required to accept any payments after the sixty (60) days.
- Alternatively, you may submit a "reasonable" payment plan and Notice of Intent to Cure within thirty (30) days of receiving the Notice of Default and Intent to Foreclose. A "reasonable"

payment plan is defined as a period of up to twelve (12) months during which time the homeowner must completely cure the default by making additional monthly payments. The Association may deny any plan lasting over twelve (12) months. If you do not comply with the agreed upon payment plan, the Association may immediately resume the foreclosure process.

- If the Association has assumed control of the unit and is renting the unit out to cover the unpaid assessment(s) you may pay the delinquent amount to assume control of the unit
- If the debt has not been accelerated (most Associations do not), you may stop the foreclosure process by paying the entire delinquent amount plus the Association’s attorney fees three (3) business days before the public sale.

Non-Judicial Foreclosure Process:



Judicial Foreclosure Process:

