
A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1 **PART I**

2 SECTION 1. The legislature finds that Act 162, Session
3 Laws of Hawaii 2010, established a mortgage foreclosure task
4 force to recommend policies and procedures to improve the way
5 mortgage foreclosures are conducted in the State. Act 162
6 required the task force to submit its findings and
7 recommendations, including any proposed legislation, to the
8 legislature for the regular sessions of 2011 and 2012.

9 The task force held several public meetings over the
10 legislative interim of 2010 to discuss the various items for
11 review raised under Act 162. Based upon these discussions, the
12 task force adopted recommendations, including proposed
13 legislation, in its report to the legislature for the regular
14 session of 2011. Some of the task force's recommendations were
15 included in Act 48, Session Laws of Hawaii 2011, a far-reaching
16 mortgage foreclosure reform measure that, among other things:



1 (1) Temporarily authorized mortgagors who are occupying,
2 as a primary residence, real property that is subject
3 to nonjudicial foreclosure to either:

4 (A) Participate in the mortgage foreclosure dispute
5 resolution program established under Act 48; or

6 (B) Convert the nonjudicial foreclosure to a judicial
7 foreclosure;

8 (2) Imposed a temporary moratorium on all new nonjudicial
9 foreclosures conducted under part I of chapter 667,
10 Hawaii Revised Statutes; and

11 (3) Specified prohibited conduct and consequences of
12 violations for foreclosing mortgagees, including
13 making any violation of the mortgage foreclosure law
14 under chapter 667, Hawaii Revised Statutes, an unfair
15 or deceptive act or practice subject to the enhanced
16 penalties under chapter 480, Hawaii Revised Statutes.

17 The task force met again over several public meetings
18 during the legislative interim of 2011 to continue its work
19 under Act 162. The focus of these meetings was divided among
20 these major issues:

21 (1) The new mortgage foreclosure provisions of Act 48,
22 Session Laws of Hawaii 2011;



(2) Matters involving condominium and other homeowner associations, including association liens and the collection of unpaid assessments; and

(3) Mortgage foreclosure counseling and dispute resolution issues.

Based upon its deliberations on these issues, the task force adopted further recommendations in its report to the legislature for the regular session of 2012.

The purpose of this Act is to implement the recommendations of the mortgage foreclosure task force submitted to the legislature for the regular session of 2012, and other best practices to address mortgage foreclosures and related issues.

PART II

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended as follows:

1. By adding two new sections to be appropriately designated and to read:

"§421J-A Association fiscal matters; lien for assessments.

(a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association's lien shall, except as otherwise provided by law,



1 be as provided in the association documents or, if no priority
2 is provided in the association documents, by the recordation
3 date of the liens; provided that any amendment to the
4 association documents that governs the priority of liens on the
5 unit shall not provide that an association lien shall have
6 priority over a mortgage lien that is recorded before the
7 amendment is recorded. A lien recorded by an association for
8 unpaid assessments shall expire six years from the date of
9 recordation unless proceedings to enforce the lien are
10 instituted prior to the expiration of the lien; provided that
11 the expiration of a recorded lien shall in no way affect the
12 association's automatic lien that arises pursuant to this
13 subsection or the association documents. Any proceedings to
14 enforce an association's lien for any assessment shall be
15 instituted within six years after the assessment became due;
16 provided that if the owner of a unit subject to a lien of the
17 association files a petition for relief under the United States
18 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
19 instituting proceedings to enforce the association's lien shall
20 be tolled until thirty days after the automatic stay of
21 proceedings under section 362 of the United States Bankruptcy
22 Code (11 U.S.C. §362) is lifted.



1 The lien of the association may be foreclosed by action or
2 by nonjudicial or power of sale foreclosure procedures set forth
3 in chapter 667, by the managing agent or board, acting on behalf
4 of the association and in the name of the association; provided
5 that no association may exercise the nonjudicial or power of
6 sale remedies provided in chapter 667 to foreclose a lien
7 against any unit that arises solely from fines, penalties, legal
8 fees, or late fees, and the foreclosure of any such lien shall
9 be filed in court pursuant to part IA of chapter 667. In any
10 association foreclosure, the unit owner shall be required to pay
11 a reasonable rental for the unit, if so provided in the
12 association documents or the law, and the plaintiff in the
13 foreclosure shall be entitled to the appointment of a receiver
14 to collect the rental owed by the unit owner or any tenant of
15 the unit. If the association is the plaintiff, it may request
16 that its managing agent be appointed as receiver to collect the
17 rental from the tenant. The managing agent or board, acting on
18 behalf of the association and in the name of the association,
19 may bid on the unit at foreclosure sale and acquire and hold,
20 lease, mortgage, and convey the unit thereafter as the board
21 deems reasonable. Action to recover a money judgment for unpaid



1 assessments shall be maintainable without foreclosing or waiving
2 the lien securing the unpaid assessments owed.

3 (b) Except as provided in subsection (g) or in the
4 association documents, when the mortgagee of a mortgage of
5 record or other purchaser of a unit obtains title to the unit as
6 a result of foreclosure of the mortgage, the acquirer of title
7 and the acquirer's successors and assigns shall not be liable
8 for the share of the assessments by the association chargeable
9 to the unit that became due prior to the acquisition of title to
10 the unit by the acquirer. The unpaid share of assessments shall
11 be deemed to be assessments collectible from all of the unit
12 owners, including the acquirer and the acquirer's successors and
13 assigns. The mortgagee of record or other purchaser of the unit
14 shall be deemed to acquire title and shall be required to pay
15 the unit's share of assessments beginning:

16 (1) Thirty-six days after the order confirming the sale to
17 the purchaser has been filed with the court;

18 (2) Sixty days after the hearing at which the court grants
19 the motion to confirm the sale to the purchaser;

20 (3) Thirty days after the public sale in a nonjudicial
21 power of sale foreclosure conducted pursuant to
22 chapter 667; or



1 (4) Upon the recording of the instrument of conveyance;
2 whichever occurs first; provided that the mortgagee of record or
3 other purchaser of the unit shall not be deemed to acquire title
4 under paragraph (1), (2), or (3), if transfer of title is
5 delayed past the thirty-six days specified in paragraph (1), the
6 sixty days specified in paragraph (2), or the thirty days
7 specified in paragraph (3), when a person (other than the
8 mortgagee of record or other purchaser of the unit) who appears
9 at the hearing on the motion or a party to the foreclosure
10 action (other than the mortgagee of record or other purchaser of
11 the unit) requests reconsideration of the motion or order to
12 confirm sale, objects to the form of the proposed order to
13 confirm sale, appeals the decision of the court to grant the
14 motion to confirm sale, or the debtor or mortgagor declares
15 bankruptcy or is involuntarily placed into bankruptcy. In any
16 such case, the mortgagee of record or other purchaser of the
17 unit shall be deemed to acquire title upon recordation of the
18 instrument of conveyance.

19 (c) Except as provided in section 667-B(c), no unit owner
20 shall withhold any assessment claimed by the association. A
21 unit owner who disputes the amount of an assessment may request
22 a written statement clearly indicating:



1 (1) The amount of regular and special assessments included
2 in the assessment, including the due date of each
3 amount claimed;

4 (2) The amount of any penalty, late fee, lien filing fee,
5 and any other charge included in the assessment;

6 (3) The amount of attorneys' fees and costs, if any,
7 included in the assessment;

8 (4) That under Hawaii law, a unit owner has no right to
9 withhold assessments for any reason;

10 (5) That a unit owner has a right to demand mediation to
11 resolve disputes about the amount or validity of an
12 association's assessment; provided that the unit owner
13 immediately pays the assessment in full and keeps
14 assessments current; and

15 (6) That payment in full of the assessment does not
16 prevent the unit owner from contesting the assessment
17 or receiving a refund of amounts not owed.

18 Nothing in this section shall limit the rights of a unit owner
19 to the protection of all fair debt collection procedures
20 mandated under federal and state law.

21 (d) A unit owner who pays an association the full amount
22 claimed by the association may file a claim against the



association in court, including small claims court, or require the association to mediate under section 421J-13 to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for relief with a court; provided that a unit owner may only file for relief in court if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the court hearing, the association may ask the court to temporarily suspend the proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the court to recommence the proceedings. If the unit owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the court to dismiss the proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association that are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board, after sixty days written notice to the unit owner of



1 the unit's share of the assessments, to terminate the delinquent
2 unit's access to the common areas and cease supplying a
3 delinquent unit with any and all services normally supplied or
4 paid for by the association. Any terminated services and
5 privileges shall be restored upon payment of all delinquent
6 assessments, but need not be restored until payment in full is
7 received.

8 (f) Before the board or managing agent may take the
9 actions permitted under subsection (e), the board shall adopt a
10 written policy providing for such actions and have the policy
11 approved by a majority vote of the unit owners, as provided in
12 the association documents, who are present in person or by proxy
13 or as otherwise permitted by the association documents, at an
14 annual or special meeting of the association or by the written
15 consent of a voting interest equal to a quorum of the unit
16 owners unless the association documents already permit the
17 process.

18 (g) Subject to this subsection and subsection (h), the
19 board may specially assess the amount of the unpaid regular
20 periodic assessments for assessments against a person who, in a
21 judicial or nonjudicial power of sale foreclosure, purchases a
22 delinquent unit; provided that:



1 (1) A purchaser who holds a mortgage on a delinquent unit,
2 which mortgage is not subordinate to the priority of
3 lien by the association, and who acquires the
4 delinquent unit through a judicial or nonjudicial
5 foreclosure proceeding, including purchasing the
6 delinquent unit at a foreclosure auction, shall not be
7 obligated to make, nor be liable for, payment of the
8 special assessment as provided for under this
9 subsection; and

10 (2) A person who subsequently purchases the delinquent
11 unit from the mortgagee referred to in paragraph (1)
12 shall be obligated to make, and shall be liable for,
13 payment of the special assessment provided for under
14 this subsection; and provided further that the
15 mortgagee or subsequent purchaser may require the
16 association to provide, at no charge, a notice of the
17 association's intent to claim a lien against the
18 delinquent unit for the amount of the special
19 assessment, prior to the subsequent purchaser's
20 acquisition of title to the delinquent unit. The
21 notice shall state the amount of the special



1 assessment, how that amount was calculated, and the
2 legal description of the unit.

3 (h) The amount of the special assessment assessed under
4 subsection (g) shall not exceed the total amount of unpaid
5 regular periodic assessments that were assessed during the six
6 months immediately preceding the completion of the judicial or
7 nonjudicial power of sale foreclosure.

8 (i) For purposes of subsections (g) and (h), the following
9 definitions shall apply, unless the context requires otherwise:

10 "Completion" means:

11 (1) In a nonjudicial power of sale foreclosure, when the
12 affidavit required under section 667-33 is recorded;
13 and

14 (2) In a judicial foreclosure, when a purchaser is deemed
15 to acquire title pursuant to subsection (b).

16 "Regular periodic assessments" does not include:

17 (1) Any special assessment, except for a special
18 assessment imposed on all units as part of a budget
19 adopted pursuant to the association documents;

20 (2) Late charges, fines, or penalties;

21 (3) Interest assessed by the association;

22 (4) Any lien arising out of the assessment; or



1 (5) Any fees or costs related to the collection or
2 enforcement of the assessment, including attorneys'
3 fees and court costs.

4 **§421J-B Association fiscal matters; collection of unpaid**
5 **assessments from tenants or rental agents.** (a) If a unit owner
6 rents or leases the unit and is in default for thirty days or
7 more in the payment of the unit's share of the regular
8 assessments, the board, for as long as the default continues,
9 may demand in writing and receive each month, or any other
10 period of time for rental payment as provided in the lease, from
11 any tenant occupying the unit or rental agent renting the unit,
12 an amount sufficient to pay all sums due from the unit owner to
13 the association, including interest, if any, but the amount
14 shall not exceed the tenant's rent due at the time of demand.
15 The tenant's payment under this section shall discharge that
16 amount of payment from the tenant's rent obligation, and any
17 contractual provision to the contrary shall be void as a matter
18 of law.

19 (b) Before taking any action under this section, the board
20 shall give to the delinquent unit owner written notice of the
21 board's intent to collect the rent owed. The notice shall:

22 (1) Be sent both by first-class and certified mail;



1 (2) Set forth the exact amount the association claims is
2 due and owing by the unit owner; and

3 (3) Indicate the intent of the board to collect such
4 amount from the rent, along with any other amounts
5 that become due and remain unpaid.

6 (c) The unit owner shall not take any retaliatory action
7 against the tenant for payments made under this section.

8 (d) The payment of any portion of the unit's share of
9 regular assessments by the tenant pursuant to a written demand
10 by the board is a complete defense, to the extent of the amount
11 demand and paid by the tenant, in an action for nonpayment of
12 rent brought by the unit owner against a tenant.

13 (e) The board may not demand payment from the tenant
14 pursuant to this section if:

15 (1) A commissioner or receiver has been appointed to take
16 charge of the unit pending a mortgage foreclosure;

17 (2) A mortgagee is in possession of the unit pending a
18 mortgage foreclosure; or

19 (3) The tenant is served with a court order directing
20 payment to a third party.

21 (f) In the event of any conflict between this section and
22 any provision of chapter 521, the conflict shall be resolved in



1 favor of this section; provided that if the tenant is entitled
2 to an offset of rent under chapter 521, the tenant may deduct
3 the offset from the amount due to the association, up to the
4 limits stated in chapter 521. Nothing herein precludes the unit
5 owner or tenant from seeking equitable relief from a court of
6 competent jurisdiction or seeking a judicial determination of
7 the amount owed.

8 (g) Before the board may take the actions permitted under
9 subsection (a), the board shall adopt a written policy providing
10 for the actions and have the policy approved by a majority vote
11 of the unit owners, as provided in the association documents,
12 who are present in person or by proxy or as otherwise permitted
13 by the association documents, at an annual or special meeting of
14 the association or by the written consent of a voting interest
15 equal to a quorum of the unit owners unless the association
16 documents already permit the process."

17 2. By amending section 421J-2 by adding a new definition
18 to be appropriately inserted and to read:

19 "Assessment" means funds collected by an association from
20 association members to operate and manage the association,
21 maintain property within the planned community for the common
22 use or benefit of association members, or provide services to



1 association members. The term also means expenditures made by,
2 or financial liabilities of, the association for operation of
3 the property and includes any allocations to reserves."

4 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By adding a new part I to read:

7 **"PART I. GENERAL PROVISIONS**

8 **§667-1 Definitions.** As used in this chapter:

9 "Approved budget and credit counselor" means a Hawaii-based
10 budget and credit counseling agency that has received approval
11 from a United States trustee or bankruptcy administrator to
12 provide instructional courses concerning personal financial
13 management pursuant to title 11 United States Code section 111.

14 "Approved housing counselor" means a Hawaii-based housing
15 counseling agency that has received approval from the United
16 States Department of Housing and Urban Development to provide
17 housing counseling services pursuant to section 106(a)(2) of the
18 Housing and Urban Development Act of 1968, title 12 United
19 States Code section 1701x, as the agency appears on the United
20 States Department of Housing and Urban Development website.

21 "Assessment" has the same meaning as "common expenses" in
22 section 514B-3 and "assessment" in section 421J-2.



1 "Association" has the same meaning as defined in sections
2 421J-2 and 514B-3.

3 "Association documents" has the same meaning as defined in
4 section 421J-2 and includes the "declaration" defined in section
5 514B-3 and the "bylaws" described in section 514B-108,
6 respectively.

7 "Association lien" has the same meaning as the lien
8 established under section 421J-A or 514B-146.

9 "Borrower" means the borrower, maker, cosigner, or
10 guarantor under a mortgage agreement.

11 "Department" means the department of commerce and consumer
12 affairs.

13 "Director" means the director of commerce and consumer
14 affairs.

15 "Dispute resolution" means a facilitated negotiation under
16 part V between a mortgagor and mortgagee for the purpose of
17 reaching an agreement for mortgage loan modification or other
18 agreement in an attempt to avoid foreclosure or to mitigate
19 damages if foreclosure is unavoidable.

20 "Foreclosure notice" means notice of default and intention
21 to foreclose prepared pursuant to section 667-22.



1 "Mailed" means to be sent by first class mail, postage
2 prepaid, unless otherwise expressly directed in this chapter.

3 "Mortgage" means a mortgage, security agreement, or other
4 document under which property is mortgaged, encumbered, pledged,
5 or otherwise rendered subject to a lien for the purpose of
6 securing the payment of money or the performance of an
7 obligation.

8 "Mortgage agreement" includes the mortgage, the note or
9 debt document, or any document amending any of the foregoing.

10 "Mortgaged property" means the property that is subject to
11 the lien of the mortgage.

12 "Mortgagee" means the current holder of record of the
13 mortgagee's or the lender's interest under the mortgage or the
14 current mortgagee's or lender's duly authorized agent.

15 "Mortgagor" means the mortgagor or borrower named in the
16 mortgage and, unless the context otherwise indicates, includes
17 the current owner of record of the mortgaged property whose
18 interest is subject to the mortgage.

19 "Neutral" means a person who is a dispute resolution
20 specialist assigned to facilitate the dispute resolution process
21 required by part V.



1 "Nonjudicial foreclosure" means foreclosure under power of
2 sale.

3 "Owner-occupant" means a person, at the time that a notice
4 of default and intention to foreclose is served on the mortgagor
5 under the power of sale:

6 (1) Who owns an interest in the residential property, and
7 the interest is encumbered by the mortgage being
8 foreclosed; and

9 (2) For whom the residential property is and has been the
10 person's primary residence for a continuous period of
11 not less than two hundred days immediately preceding
12 the date on which the notice is served.

13 "Power of sale" or "power of sale foreclosure" means a
14 nonjudicial foreclosure when the mortgage contains, authorizes,
15 permits, or provides for a power of sale, a power of sale
16 foreclosure, a power of sale remedy, or a nonjudicial
17 foreclosure.

18 "Property" means property (real, personal, or mixed), an
19 interest in property (including fee simple, leasehold, life
20 estate, reversionary interest, and any other estate under
21 applicable law), or other interests that can be subject to the
22 lien of a mortgage.



1 "Record" means to record or file a document in the office
2 of the assistant registrar of the land court under chapter 501
3 or to record a document in the bureau of conveyances under
4 chapter 502, or both, as applicable.

5 "Residential property" means real property that is improved
6 and used for residential purposes.

7 "Serve", when referring to providing notice of intention to
8 foreclose or notice of default and intention to foreclose
9 pursuant to a nonjudicial foreclosure, means to have service of
10 the notice of default and intention to foreclose made in
11 accordance with the service of process or the service of summons
12 under the Hawaii rules of civil procedure and under sections
13 634-35 and 634-36, excluding however, any return or affidavit of
14 service obligations required therein.

15 "Time share interest" has the same meaning as in section
16 514E-1.

17 "Unit" has the same meaning as in sections 421J-2 and 514B-
18 3.

19 "Unit owner" has the same meaning as "member" in section
20 421J-2 and "unit owner" in section 514B-3."

21 2. By adding a new part to be appropriately designated and
22 to read:



1 "PART . ASSOCIATION ALTERNATE POWER OF SALE

2 FORECLOSURE PROCESS

3 §667-A Alternate power of sale process. The power of sale
4 process in this part is an alternative process for associations
5 to the foreclosure by action in part IA and the foreclosure by
6 power of sale in part II.

7 §667-B Notice of default and intention to foreclose;
8 contents; distribution; alternative remedies for failure to
9 serve. (a) When a unit owner has failed to pay an assessment,
10 and when the association intends to conduct a power of sale
11 foreclosure under this part, the association shall prepare a
12 written notice of default and intention to foreclose addressed
13 to the unit owner. The notice of default and intention to
14 foreclose shall state:

- 15 (1) The name and address of the association;
16 (2) The name and last known address of the unit owners;
17 (3) With respect to the unit, the address or a description
18 of its location, tax map key number, and certificate
19 of title or transfer certificate of title number if
20 registered in the land court;



- 1 (4) The description of the default or, if the default is a
2 monetary default, an itemization of the delinquent
3 amount;
- 4 (5) The action required to cure the default, including the
5 delinquent amount and the estimated amount of the
6 association's attorney's fees and costs, and all other
7 fees and costs related to the default estimated to be
8 incurred by the association by the deadline date;
- 9 (6) The date by which the default must be cured, which
10 shall be within sixty days after service of the notice
11 of default and intention to foreclose;
- 12 (7) A statement that if the default is not cured by the
13 deadline date stated in the notice of default and
14 intention to foreclose, the entire unpaid balance of
15 the moneys owed to the association will become due,
16 that the association intends to conduct a power of
17 sale foreclosure to sell the unit at a public sale
18 without any court action and without going to court,
19 and that the association or any other person may
20 acquire the unit at the public sale;
- 21 (8) A statement that if the default is not cured by the
22 deadline date stated in the notice of default and



1 intention to foreclose, the association may publish
2 the public notice of the public sale in a newspaper of
3 general circulation or on a state website, pursuant to
4 section 667-F(d);

5 (9) The name, address, electronic address, and telephone
6 number of the attorney who is representing the
7 association; provided that the attorney shall be
8 licensed to practice law in the State and physically
9 located in the State; and

10 (10) Notice of the right of the unit owner to submit a
11 payment plan within thirty days pursuant to subsection
12 (c).

13 (b) The notice of default and intention to foreclose shall
14 also contain wording substantially similar to the following in
15 all capital letters and printed in not less than fourteen-point
16 font:

17 "IF THE DEFAULT ON THE PAYMENT OF ASSESSMENTS
18 CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE
19 UNIT MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT
20 ACTION AND WITHOUT GOING TO COURT.

21 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.
22 FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY



1 LICENSED IN THIS STATE.

2 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE
3 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED
4 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO
5 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT
6 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO
7 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
8 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
9 REQUESTED."

10 (c) A unit owner may submit a payment plan within thirty
11 days after service of a notice of default and intention to
12 foreclose on the unit owner. The unit owner shall submit the
13 payment plan to the association or its attorney by certified
14 mail return receipt requested or by hand delivery. The
15 association shall not reject a reasonable payment plan. A unit
16 owner may also cure the default within sixty days after service
17 of a notice of default and intention to foreclose on the unit
18 owner by paying the association the full amount of the default,
19 including the foreclosing association's attorneys' fees and
20 costs, and all other fees and costs related to the default that
21 are incurred or estimated to be incurred by the foreclosing
22 association. From and after the date that the unit owner gives



1 written notice to the association of the unit owner's intent to
2 cure the default or timely submits a payment plan, any
3 nonjudicial foreclosure of the lien shall be stayed during the
4 sixty-day period to cure the default or during the term of the
5 payment plan or a longer period that is agreed upon by the
6 parties. A unit owner's failure to strictly perform any agreed-
7 upon payment plan shall entitle the association to pursue its
8 remedies without further delay.

9 For purposes of this section, "reasonable payment plan"
10 means a plan that provides for:

- 11 (1) Timely payment of all assessments that become due
12 after the date that the payment plan is proposed; and
13 (2) Additional monthly payments of an amount sufficient to
14 cure the default, within a reasonable period under the
15 circumstances as determined by the board of directors
16 in its discretion; provided that a period of up to
17 twelve months shall be deemed reasonable; and provided
18 further that the board of directors shall have the
19 discretion to agree to a payment plan in excess of
20 twelve months.



1 (d) The notice of default and intention to foreclose shall
2 also include contact information for approved housing counselors
3 and approved budget and credit counselors.

4 (e) The association shall have the notice of default and
5 intention to foreclose served on:

6 (1) The unit owner;

7 (2) Any prior or junior creditors who have a recorded lien
8 on the unit before the recordation of the notice of
9 default and intention to foreclose under section
10 667-C;

11 (3) The state director of taxation;

12 (4) The director of finance of the county where the unit
13 is located; and

14 (5) Any other person entitled to receive notice under
15 section 667-5.5.

16 (f) If the association is unable to serve the notice of
17 default and intention to foreclose on the unit owner or any
18 other party listed in subsection (e)(2) to (5) within sixty
19 days, the association may:

20 (1) File a special proceeding in the circuit court of the
21 circuit in which the unit is located, for permission



1 to proceed with a nonjudicial foreclosure by serving
2 the unit owner only by publication and posting;

3 (2) Proceed with a nonjudicial foreclosure of the unit;
4 provided that if the association proceeds without the
5 permission of the court, the association shall not be
6 entitled to obtain a deficiency judgment against the
7 unit owner, and the unit owner shall have one year
8 from the date the association records the deed in the
9 nonjudicial foreclosure to redeem the unit by paying
10 the unit owner's delinquency to the association; or

11 (3) Take control of the unit if the unit is unoccupied,
12 after giving notice to the unit owner at the unit
13 owner's last known address as shown on the records of
14 the association or as determined by the association as
15 part of its due diligence to serve notice to the
16 owner. The association's authority to take control of
17 the unit pursuant to this paragraph shall be exercised
18 solely for the purpose of renting the unit to generate
19 rental income to pay the unit owner's delinquency, and
20 the association shall acquire no legal title to the
21 unit. In addition, the association shall credit the
22 net rental proceeds generated from the rental of the



1 unit to the owner's delinquency. For purposes of this
2 paragraph, "net rental proceeds" means the rental
3 proceeds remaining each month after deducting:

4 (A) The unit's regular monthly assessments that come
5 due while the association controls the unit
6 pursuant to this subsection;

7 (B) Any rental agent commissions; and

8 (C) Expenses incurred by the association in
9 maintaining the unit in rentable condition.

10 If the unit owner pays the full amount of the unit
11 owner's delinquency to the association, the
12 association shall return control of the unit to the
13 unit owner; provided that the full amount of the unit
14 owner's delinquency shall be calculated by deducting
15 the total net rental proceeds collected by the
16 association, if any, from the unit owner's
17 delinquency.

18 **§667-C Recordation of notice of default and intention to**
19 **foreclose.** Before the deadline date in the notice of default
20 and intention to foreclose, the notice may be recorded in a
21 recordable form in a manner similar to recordation of notices of
22 pendency of action under section 501-151 or section 634-51, or



1 both, as applicable. The recorded notice of default and
2 intention to foreclose shall have the same effect as a notice of
3 pendency of action. From and after the recordation of the
4 notice of default and intention to foreclose, any person who
5 becomes a purchaser or encumbrancer of the unit shall be deemed
6 to have constructive notice of the power of sale foreclosure and
7 shall be bound by the foreclosure.

8 **§667-D Cure of default.** (a) If the default is cured as
9 required by the notice of default and intention to foreclose, or
10 if the parties have agreed on a payment plan, the association
11 shall rescind the notice of default and intention to foreclose.
12 Within fourteen days of the date of the cure or an agreement on
13 a payment plan, the association shall so notify any person who
14 was served with the notice of default and intention to
15 foreclose. If the notice of default and intention to foreclose
16 was recorded, a release of the notice of default and intention
17 to foreclose shall be recorded.

18 (b) If the default is not cured as required by the notice
19 of default and intention to foreclose, or the parties have not
20 agreed on a payment plan, the association, without filing a
21 court action and without going to court, may foreclose the



1 association's lien under power of sale to sell the unit at a
2 public sale.

3 **§667-E Date of public sale of unit; place of sale. (a)**

4 The public sale of the unit shall take place on the later of the
5 following:

6 (1) At least sixty days after the public notice of the
7 public sale is distributed under section 667-F; or

8 (2) At least fourteen days after the date of the
9 publication of the third public notice advertisement
10 under section 667-F(d).

11 (b) The public sale of the unit shall be held only in the
12 county where the unit is located; provided that the public sale
13 shall be held only on grounds or at facilities under the
14 administration of the State, as follows:

15 (1) At the state capitol, for a public sale of a unit
16 located in the city and county of Honolulu;

17 (2) At a state facility in Hilo, for a public sale of a
18 unit located in the districts of Hamakua, north Hilo,
19 south Hilo, or Puna;

20 (3) At a state facility in Kailua-Kona, for a public sale
21 of a unit located in the districts of north Kohala,
22 south Kohala, north Kona, south Kona, or Kau;



(4) At a state facility in the county seat of Maui, for a public sale of a unit located in the county of Maui; and

(5) At a state facility in the county seat of Kauai, for a public sale of a unit located in the county of Kauai; as designated by the department of accounting and general services; provided further that no public sale shall be held on grounds or at facilities under the administration of the judiciary. The public sale shall be held during business hours on a business day.

(c) The public sale of the unit shall be conducted by the association on the date, at the time, and at the place described in the public notice of the public sale.

§667-F Public notice of public sale; contents; distribution; publication. (a) The association shall prepare the public notice of the public sale. The public notice shall state:

(1) The date, time, and place of the public sale;

(2) The unpaid balance of the moneys owed to the association;

(3) A description of the unit, including the address and the tax map key number of the unit;



1 (4) The name of the unit owner;

2 (5) The name of the association;

3 (6) The name of any prior or junior creditors having a
4 recorded lien on the unit before the recordation of
5 the notice of default and intention to foreclose under
6 section 667-C;

7 (7) The name, the address in the State, and the telephone
8 number in the State of the person in the State
9 conducting the public sale; and

10 (8) The terms and conditions of the public sale.

11 (b) The public notice shall also contain wording
12 substantially similar to the following in all capital letters:

13 "THE DEFAULT UNDER THE ASSOCIATION
14 DOCUMENTS MAY BE CURED NO LATER THAN THREE
15 BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC
16 SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT
17 THAT WOULD BE OWED TO THE ASSOCIATION PLUS
18 THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS,
19 AND ALL OTHER FEES AND COSTS INCURRED BY THE
20 FORECLOSING ASSOCIATION RELATED TO THE
21 DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN
22 THE ASSOCIATION AND THE UNIT OWNER. THERE



1 IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT
2 OF REDEMPTION AFTER THAT TIME. IF THE
3 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL
4 BE CANCELED."

5 (c) If the default is not cured as required by the notice
6 of default and intention to foreclose, the association shall
7 have a copy of the public notice of the public sale of the unit:

8 (1) Mailed or delivered to the unit owners at their
9 respective last known addresses;

10 (2) Mailed or delivered to any prior or junior creditors
11 having a recorded lien on the unit before the
12 recordation of the notice of default and intention to
13 foreclose under section 667-C;

14 (3) Mailed or delivered to the state director of taxation;

15 (4) Mailed or delivered to the director of finance of the
16 county where the unit is located;

17 (5) Posted on the unit or on such other real property of
18 which the unit is a part; and

19 (6) Mailed or delivered to any other person entitled to
20 receive notice under section 667-5.5 or 667-21.5.

21 (d) The association shall have the public notice of the
22 public sale:



- (1) Printed in not less than seven-point font and published in the classified section of a newspaper of general circulation in the geographic area in which the unit is located. A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph. The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that the public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.
- (e) As used in subsection (d):
- "General circulation" refers to a newspaper that:
- (1) Contains news of a general nature; and



(2) Is distributed within the geographic area where the unit is located:

(A) At least weekly;

(B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and

(C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.

"Geographic area" means:

(1) The real property tax zone of the unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the unit is located in the county of Hawaii; or

(2) The county in which the unit is located, if the unit is located in the city and county of Honolulu or the county of Maui or Kauai.

§667-G Postponement, cancellation of sale. (a) The public sale may be either postponed or canceled by the association. Notice of the postponement or the cancellation of the public sale shall be:



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

3 (2) Provided to any other person who is entitled to
4 receive the notice of default under section 667-B.

5 (b) If there is a postponement of the public sale of the
6 unit, a new public notice of the public sale shall be published
7 once in the format described in section 667-F. The new public
8 notice shall state that it is a notice of a postponed sale. The
9 public sale shall take place no sooner than fourteen days after
10 the date of the publication of the new public notice. Not less
11 than fourteen days before the date of the public sale, a copy of
12 the new public notice shall be posted on the unit or on another
13 real property of which the unit is a part, and it shall be
14 mailed or delivered to the unit owner and to any other person
15 entitled to receive notice under section 667-B(e).

16 (c) Upon the fourth postponement of every series of four
17 consecutive postponements, the association shall follow all of
18 the public notice of public sale requirements of section 667-F,
19 including the requirements of mailing and posting under section
20 667-F(c) and of publication under section 667-F(d).

21 (d) The default under the association documents may be
22 cured no later than three business days before the date of the



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

10 **§667-H Authorized bidder; successful bidder.** Any person,
11 including the association, shall be authorized to bid for the
12 unit at the public sale and to purchase the unit. The highest
13 bidder who meets the requirements of the terms and conditions of
14 the public sale shall be the successful bidder. The public sale
15 shall be considered as being held when the unit is declared by
16 the association as being sold to the successful bidder. When
17 the public sale is held, the successful bidder at the public
18 sale, as the purchaser, shall make a nonrefundable downpayment
19 to the association of not less than ten per cent of the highest
20 successful bid price. If the successful bidder is the
21 association, the downpayment requirement may be satisfied by
22 offset and a credit bid up to the amount of the lien debt.



1 **\$667-I Successful bidder's failure to comply; forfeiture**
2 **of downpayment.** If the successful bidder later fails to comply
3 with the terms and conditions of the public sale or fails to
4 complete the purchase within forty-five days after the public
5 sale is held, the downpayment shall be forfeited by that bidder.
6 The forfeited downpayment shall be credited by the association
7 first towards the association's attorney's fees and costs, then
8 towards the fees and costs of the power of sale foreclosure, and
9 any balance towards the moneys owed to the association. The
10 association, in its discretion, may then accept the bid of the
11 next highest bidder who meets the requirements of the terms and
12 conditions of the public sale or may begin the public sale
13 process again.

14 **\$667-J Conveyance of property on payment of purchase**
15 **price; distribution of sale proceeds.** (a) After the purchaser
16 completes the purchase by paying the full purchase price and the
17 costs for the purchase, the unit shall be conveyed to the
18 purchaser by a conveyance document. The conveyance document
19 shall be in a recordable form and shall be signed by the
20 association in the association's name. The unit owner shall not
21 be required to sign the conveyance document.



1 (b) From the sale proceeds, after paying in the following
2 order:

- 3 (1) The association's attorney's fees and costs;
4 (2) The fees and costs of the power of sale foreclosure;
5 (3) The moneys owed to the association; and
6 (4) All other liens and encumbrances in the order of
7 priority as a matter of law,

8 the balance of the sale proceeds shall be distributed by the
9 association to junior creditors having valid liens on the unit
10 in the order of their priority and not pro rata. Any remaining
11 surplus after payment in full of all valid lien creditors shall
12 be distributed to the unit owner.

13 (c) Lien creditors prior to the association shall not be
14 forced to their right of recovery. However, the association and
15 any prior lien creditor may agree in writing that the proceeds
16 from the sale will be distributed by the association to the
17 prior lien creditor towards the payment of moneys owed to the
18 prior lien creditor before any moneys are paid to the
19 association.

20 **\$667-K Affidavit after public sale; contents.** (a) After
21 the public sale is held, the association shall sign an affidavit
22 under penalty of perjury:



- 1 (1) Stating that the power of sale foreclosure was made
2 pursuant to the power of sale provision in the law or
3 association documents;
4 (2) Stating that the power of sale foreclosure was
5 conducted as required by this part;
6 (3) Summarizing what was done by the association;
7 (4) Attaching a copy of the recorded notice of default and
8 intention to foreclose; and
9 (5) Attaching a copy of the last public notice of the
10 public sale.

11 (b) The recitals in the affidavit required under
12 subsection (a) may, but need not, be substantially in the
13 following form:

- 14 (1) I am duly authorized to represent or act on behalf of
15 _____ (name of association)
16 ("association") regarding the following power of sale
17 foreclosure. I am signing this affidavit in
18 accordance with the alternate power of sale
19 foreclosure law (Chapter 667, Part , Hawaii Revised
20 Statutes);
21 (2) The association is an "association" as defined in the
22 power of sale foreclosure law;



1 (3) The power of sale foreclosure is of an association
2 lien. If the lien was recorded, the lien was dated
3 _____, and recorded in the
4 _____ (bureau of conveyances or office
5 of the assistant registrar of the land court) as
6 _____ (recordation information). The
7 unit is located at: _____ (address or
8 description of location) and is identified by tax map
9 key number: _____. The legal
10 description of the property, including the certificate
11 of title or transfer certificate of title number if
12 registered with the land court, is attached as Exhibit
13 "A";

14 (4) Pursuant to the power of sale provision of law or
15 association documents, the power of sale foreclosure
16 was conducted as required by the power of sale
17 foreclosure law. The following is a summary of what
18 was done:

19 (A) A notice of default and intention to foreclose
20 was served on the unit owner and the following
21 person: _____. The notice of
22 default and intention to foreclose was served on



1 the following date and in the following manner:

2 _____;

3 (B) The date of the notice of default and intention
4 to foreclose was _____ (date).

5 The deadline in the notice for curing the default
6 was _____ (date), which deadline
7 date was at least sixty days after the date of
8 the notice;

9 (C) The notice of default and intention to foreclose
10 was recorded before the deadline date in the
11 _____ (bureau of conveyances or
12 office of the assistant registrar of the land
13 court). The notice was recorded on
14 _____ (date) as document no.
15 _____. A copy of the recorded
16 notice is attached as Exhibit "1";

17 (D) The default was not cured by the deadline date in
18 the notice of default and intention to foreclose;

19 (E) A public notice of the public sale was initially
20 published in the classified section of the
21 _____, in accordance with section
22 667-F(d), Hawaii Revised Statutes, once each week



1 for three consecutive weeks on the following
2 dates: _____. A copy of the
3 affidavit of publication for the last public
4 notice of the public sale is attached as Exhibit
5 "2". The date of the public sale was
6 _____ (date). The last
7 publication was not less than fourteen days
8 before the date of the public sale;

9 (F) The public notice of the public sale was sent to
10 the unit owner, to the state director of
11 taxation, to the director of finance of the
12 county where the unit is located, and to the
13 following: _____. The public
14 notice was sent on the following dates and in the
15 following manner: _____. Those
16 dates were after the deadline date in the notice
17 of default and intention to foreclose, and those
18 dates were at least sixty days before the date of
19 the public sale;

20 (G) The public notice of the public sale was posted
21 on the unit or on such other real property of
22 which the unit is a part on _____



1 (date). That date was at least sixty days before
2 the date of the public sale;

3 (H) A public sale of the unit was held on a business
4 day during business hours on: _____

5 (date), at _____ (time), at the
6 following location: _____. The

7 highest successful bidder was

8 _____ (name) with the highest

9 successful bid price of \$ _____;

10 and

11 (I) At the time the public sale was held, the default
12 was not cured; and

13 (5) This affidavit is signed under penalty of perjury.

14 **§667-L Recordation of affidavit, conveyance document;**

15 **effect.** (a) The affidavit required under section 667-K and the
16 conveyance document shall be recorded no earlier than ten days
17 after the public sale is held but not later than forty-five days
18 after the public sale is held. The affidavit and the conveyance
19 document may be recorded separately and on different days.

20 After the recordation, the association shall mail or deliver a
21 recorded copy to those persons entitled to receive the public
22 notice of the public sale under section 667-F(c).



1 (b) When both the affidavit and the conveyance document
2 are recorded:

3 (1) The sale of the unit is considered completed;

4 (2) All persons claiming by, through, or under the unit
5 owner and all other persons having liens on the unit
6 junior to the lien of the association shall be forever
7 barred of and from any and all right, title, interest,
8 and claims at law or in equity in and to the unit and
9 every part of the unit, except as otherwise provided
10 by law;

11 (3) The lien of the association and all liens junior in
12 priority to the lien of an association shall be
13 automatically extinguished from the unit; and

14 (4) The purchaser shall be entitled to immediate and
15 exclusive possession of the unit.

16 (c) The unit owner and any person claiming by, through, or
17 under the unit owner and who is remaining in possession of the
18 unit after the recordation of the affidavit and the conveyance
19 document shall be considered a tenant at sufferance subject to
20 eviction or ejectment. The purchaser may bring an action in the
21 nature of summary possession under chapter 666, ejectment, or
22 trespass or may bring any other appropriate action in a court



1 where the unit is located to obtain a writ of possession, a writ
2 of assistance, or any other relief. In any such action, the
3 court shall award the prevailing party its reasonable attorneys'
4 fees and costs and all other reasonable fees and costs, all of
5 which are to be paid for by the non-prevailing party.

6 **§667-M Recordation; full satisfaction of debt by unit**
7 **owner.** Except as provided in subsection 667-B(f)(2), the
8 recordation of both the conveyance document and the affidavit
9 shall not operate as full satisfaction of the debt owed by the
10 unit owner to the association unless the sale proceeds from the
11 unit or the amounts paid by a purchaser under the special
12 assessment permitted by section 421J-A or 514B-146 are
13 sufficient to satisfy the unit owner's debt to the association,
14 including the association's legal fees and costs. The debts of
15 other lien creditors are unaffected except as provided in this
16 part.

17 **§667-N Prohibited conduct.** It shall be a prohibited
18 practice for any association to engage in any of the following
19 practices:

- 20 (1) Holding a public sale on a date, at a time, or at a
21 place other than that described in the public notice
22 of the public sale or a properly noticed postponement;



(2) Specifying a fictitious place in the public notice of the public sale;

(3) Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale; or

(4) Completing or attempting to complete nonjudicial foreclosure proceedings against a unit owner in violation of section 667-B(c)."

3. By adding four new sections to part IA to be appropriately designated and to read:

"§667-O Attorney affirmation in judicial foreclosure. Any attorney who files on behalf of a mortgagee seeking to foreclose on a residential property under this part shall sign and submit an affirmation that the attorney has verified the accuracy of the documents submitted, under penalty of perjury and subject to applicable rules of professional conduct. The affirmation shall be in substantially the following form:

_____ CIRCUIT COURT OF THE STATE OF HAWAII

Plaintiff,

v.

Defendant(s)

AFFIRMATION



Mortgaged Premises:

Note: During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities, including failure to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits that falsely attest to such review and to other critical facts in the foreclosure process; and "robosignature" of documents.

* * *

[_____] , Esq., pursuant to Hawaii Revised Statutes §667-O and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of Hawaii and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.
2. On [date], I communicated with the following representative or representatives of Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents and records relating to this case for factual accuracy; and (b) confirmed the factual accuracy of the allegations set forth in the Complaint and any supporting affidavits or affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith.

Name

Title

_____	_____
_____	_____
_____	_____

3. Based upon my communication with [persons specified in item 2], as well as upon my own inspection and other reasonable inquiry under the circumstances, I affirm that, to the best of my knowledge, information, and belief, the Summons, Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law and that plaintiff has legal standing to bring this foreclosure action. I understand my continuing obligation to amend this Affirmation in light of newly discovered material facts following its filing.
4. I am aware of my obligations under Hawaii Rules of Professional Conduct.



1 _____
2 DATED:
3

4 *N.B.: Counsel may augment this affirmation to provide explanatory details,*
5 *and may file supplemental affirmations or affidavits for the same purpose."*
6

7 §667-P Attorney affirmation in judicial foreclosure. An
8 attorney who files a complaint in a mortgage foreclosure action
9 shall affirm in writing, under penalty of perjury, that to the
10 best of the attorney's knowledge, information, and belief the
11 allegations contained in the complaint are warranted by existing
12 law and have evidentiary support.

13 §667-Q Association foreclosures; cure of default; payment
14 plan. If a foreclosure by action is initiated by an association
15 pursuant to section 421J-A, 514A-90, or 514B-146:

16 (1) At the time of the commencement of the foreclosure by
17 action, the association shall serve the unit owner
18 with written contact information for approved housing
19 counselors and approved budget and credit counselors;

20 (2) A unit owner may cure the default within sixty days
21 after service of the association's complaint for
22 foreclosure by action by paying the association the
23 full amount of the default, including the foreclosing
24 association's attorneys' fees and costs, and all other
25 fees and costs related to the default, along with any



1 additional amounts estimated to be incurred by the
2 foreclosing association;

3 (3) A unit owner may submit a payment plan within thirty
4 days after service of the association's complaint for
5 foreclosure by action. The unit owner shall submit
6 the payment plan to the association or its attorney by
7 certified mail return receipt requested or by hand
8 delivery. The association shall not reject a
9 reasonable payment plan. A unit owner's failure to
10 strictly perform any agreed-upon payment plan shall
11 entitle the association to pursue its remedies without
12 further delay.

13 For purposes of this paragraph, "reasonable payment
14 plan" means a plan that provides for:

15 (A) Timely payment of all assessments that become due
16 after the date that the payment plan is proposed;
17 and

18 (B) Additional monthly payments of an amount
19 sufficient to cure the default, within a
20 reasonable period under the circumstances as
21 determined by the board of directors in its
22 discretion; provided that a period of up to



1 twelve months shall be deemed reasonable; and
2 provided further that the board of directors
3 shall have the discretion to agree to a payment
4 plan in excess of twelve months;

5 (4) From and after the date that the unit owner gives
6 written notice to the association of the unit owner's
7 intent to cure the default pursuant to paragraph (2)
8 or timely submits a payment plan pursuant to paragraph
9 (3), any foreclosure by action shall be stayed during
10 the sixty-day period to cure the default or during the
11 term of the payment plan or a longer period that is
12 agreed upon by the parties;

13 (5) If the default is cured pursuant to paragraph (2), the
14 association shall dismiss the foreclosure by action.
15 If the parties have agreed on a payment plan pursuant
16 to paragraph (3), the association shall stay the
17 foreclosure by action. Within fourteen days of the
18 date of the cure or an agreement on a payment plan,
19 the association shall notify any person who was served
20 as a result of the foreclosure by action that the
21 action has been dismissed or stayed, as the case may
22 be. If a notice of pendency of action for the



1 foreclosure by action was recorded, a release of the
2 notice of pendency of action shall be recorded if the
3 action is dismissed; and

4 (6) If the default is not cured pursuant to paragraph (2),
5 or the parties have not agreed on a payment plan
6 pursuant to paragraph (3), the association may
7 continue to foreclose the association's lien under
8 foreclosure by action.

9 §667-R Publication of notice of public sale. (a) The
10 foreclosing mortgagee or association in a foreclosure by action
11 shall have the public notice of the public sale:

12 (1) Printed in not less than seven-point font and
13 published in the classified section of a newspaper of
14 general circulation in the geographic area in which
15 the mortgaged property or unit is located. A person
16 may apply to the circuit court for an order confirming
17 a newspaper to be of general circulation for purposes
18 of this paragraph, which the court shall grant upon
19 proof of compliance with this paragraph. The public
20 notice shall be published once each week for three
21 consecutive weeks, constituting three publications.
22 The public sale shall take place no sooner than



fourteen days after the date of the publication of the
third public notice advertisement; or

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

(b) As used in this section:

"General circulation" refers to a newspaper that:

(1) Contains news of a general nature; and

(2) Is distributed within the geographic area where the
mortgaged property or unit is located:

(A) At least weekly;

(B) For a minimum of one year unless interrupted by
strike, natural disaster, or act of war or
terror; and

(C) To a minimum of three per cent of the residents
of the geographic area, as determined by the last
decennial United States census and as verified by
an independent audit.

"Geographic area" means:



1 (1) The real property tax zone of the mortgaged property
2 or unit, as shown on the real property tax maps kept
3 by the real property tax assessment division of the
4 county of Hawaii, if the mortgaged property or unit is
5 located in the county of Hawaii; or

6 (2) The county in which the mortgaged property or unit is
7 located, if the mortgaged property or unit is located
8 in the city and county of Honolulu or the county of
9 Maui or Kauai."

10 4. By amending its title to read:

11 "CHAPTER 667

12 [MORTGAGE] FORECLOSURES"

13 5. By designating part I as part IA and amending the title
14 of that part to read:

15 "PART ~~[I.]~~ IA. FORECLOSURE BY ACTION [OR

16 ~~FORECLOSURE BY POWER OF SALE]~~ "

17 6. By designating section 667-1 as section 667-1.5.

18 7. By amending the title of part II to read:

19 "~~[I.]~~ PART II. ~~[I.]—ALTERNATE]~~ POWER OF SALE

20 FORECLOSURE PROCESS"



SECTION 4. Section 454M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A mortgage servicer licensed or acting under this chapter, in addition to any other duties imposed by law, shall:

(1) Safeguard and account for any money handled for the
borrower;

(2) Act with reasonable skill, care, timeliness, promptness, and diligence;

(3) Disclose to the commissioner in the servicer's license application and each yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities;

(4) File a report with each yearly renewal statement in a form and format acceptable to the director detailing the servicer's activities in this State, including:

(A) The number of mortgage loans the servicer is servicing;

(B) The type and characteristics of loans serviced in this State;

1 (C) The number of serviced loans in default, along
2 with a breakdown of thirty-, sixty-, and ninety-
3 day delinquencies;

4 (D) Information on loss mitigation activities,
5 including details on workout arrangements
6 undertaken;

7 (E) Information on foreclosures commenced in this
8 State;

9 (F) The affiliations of the mortgage servicer,
10 including any lenders or mortgagees for which the
11 mortgage servicer provides service, any
12 subsidiary or parent entities of the mortgage
13 servicer, and a description of the authority held
14 by the mortgage servicer through its
15 affiliations; and

16 (G) Any other information that the commissioner may
17 require; and

18 (5) Maintain an office in the State that is staffed by at
19 least one agent or employee for the purposes of
20 addressing consumer inquiries or complaints and
21 accepting service of process; provided that the
22 mortgage servicer's business constitutes at least a



1 twenty per cent share of the portion of the total
2 mortgage loan service market in the State that was
3 serviced by mortgage servicers licensed under this
4 chapter within the previous calendar year; and
5 provided further that nothing in this section shall
6 prohibit a mortgagee as defined by section [~~667-21~~]
7 667-1 or a mortgage servicer from contracting with a
8 licensee that maintains an office in this State in
9 conformity with this section for the purposes of
10 addressing consumer inquiries or complaints and
11 accepting service of process."

12 SECTION 5. Section 454M-10, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**\$454M-10 Penalty.** Any person who violates any provision
15 of this chapter may be subject to an administrative fine of [~~at~~
16 ~~least \$1,000 and~~] not more than \$7,000 for each violation;
17 provided that \$1,000 of the aggregate fine amount shall be
18 deposited into the mortgage foreclosure dispute resolution
19 special fund established pursuant to section 667-86."

20 SECTION 6. Section 501-151, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "**\$501-151 Pending actions, judgments; recording of,**



1 **notice.** No writ of entry, action for partition, or any action
2 affecting the title to real property or the use and [~~occupation~~]
3 occupancy thereof or the buildings thereon, and no judgment, nor
4 any appeal or other proceeding to vacate or reverse any
5 judgment, shall have any effect upon registered land as against
6 persons other than the parties thereto, unless a full memorandum
7 thereof, containing also a reference to the number of the
8 certificate of title of the land affected is filed or recorded
9 and registered. Except as otherwise provided, every judgment
10 shall contain or have endorsed on it the State of Hawaii general
11 excise taxpayer identification number, the federal employer
12 identification number, or the last four digits only of the
13 social security number for persons, corporations, partnerships,
14 or other entities against whom the judgment is rendered. If the
15 judgment debtor has no social security number, State of Hawaii
16 general excise taxpayer identification number, or federal
17 employer identification number, or if that information is not in
18 the possession of the party seeking registration of the
19 judgment, the judgment shall be accompanied by a certificate
20 that provides that the information does not exist or is not in
21 the possession of the party seeking registration of the
22 judgment. Failure to disclose or disclosure of an incorrect



1 social security number, State of Hawaii general excise taxpayer
2 identification number, or federal employer identification number
3 shall not in any way adversely affect or impair the lien created
4 upon recording of the judgment. This section does not apply to
5 attachments, levies of execution, or to proceedings for the
6 probate of wills, or for administration in a probate court;
7 provided that in case notice of the pendency of the action has
8 been duly registered it is sufficient to register the judgment
9 in the action within sixty days after the rendition thereof.

10 As used in this chapter "judgment" includes an order or
11 decree having the effect of a judgment.

12 Notice of the pendency of an action in a United States
13 District Court, as well as a court of the State of Hawaii, may
14 be recorded.

15 Notice of opening a dispute resolution case as provided in
16 section 667-79 may be recorded.

17 Foreclosure notice as provided in section [~~667-14~~] 667-23
18 may be recorded.

19 The party seeking registration of a judgment shall redact
20 the first five digits of any social security number by blocking
21 the numbers out on the copy of the judgment to be filed or
22 recorded."



1 SECTION 7. Section 501-241, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Without limiting the generality of subsection (a),
4 the following instruments need not be registered pursuant to
5 this chapter to be effective and shall be recorded in the bureau
6 of conveyances pursuant to chapter 502:

7 (1) An assignment or other instrument transferring a
8 leasehold time share interest;

9 (2) A mortgage or other instrument granting a lien on a
10 leasehold time share interest;

11 (3) An agreement of sale for the sale of a leasehold time
12 share interest. Any such agreement of sale shall be
13 subject to section 502-85 and shall not be subject to
14 section 501-101.5;

15 (4) A lien or notice of lien pertaining to a leasehold
16 time share interest in favor of a time share owners
17 association, an association of owners under chapter
18 514A or 514B, or a similar homeowner's association;

19 (5) A judgment, decree, order of court, attachment, writ,
20 or other process against a leasehold time share
21 interest;



- 1 (6) A mechanic's or materialman's lien or other lien upon
2 a leasehold time share interest;
- 3 (7) A lis pendens or notice of pendency of action, notice,
4 affidavit, demand, certificate, execution, copy of
5 execution, officer's return, or other instrument
6 relating to a leasehold time share interest and
7 otherwise required or permitted to be recorded or
8 registered in connection with the enforcement or
9 foreclosure of any lien, whether by way of power of
10 sale pursuant to [~~section 667-5,~~] chapter 667 or
11 otherwise;
- 12 (8) A power of attorney given by the owner of a leasehold
13 time share interest or the vendor or vendee under an
14 agreement of sale for the sale of a leasehold time
15 share interest, a mortgagee or other lienor having a
16 mortgage or lien upon a leasehold time share interest,
17 or another party holding a claim or encumbrance
18 against or an interest in a leasehold time share
19 interest; or
- 20 (9) An instrument assigning, extending, continuing,
21 dissolving, discharging, releasing in whole or in
22 part, reducing, canceling, extinguishing, or otherwise



1 modifying or amending any of the foregoing
2 instruments."

3 SECTION 8. Section 501-263, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§~~501-263~~§~~ Effect of deregistration in specific
6 cases. Notwithstanding section 501-262(a)(3), the following
7 documents, instruments, and papers need not be registered
8 pursuant to this chapter to be effective and shall be recorded
9 in the bureau of conveyances pursuant to chapter 502:

10 (1) Any document, instrument, or paper assigning,
11 extending, continuing, dissolving, discharging,
12 releasing in whole or in part, reducing, canceling,
13 extinguishing, or otherwise modifying or amending any
14 of the following documents, instruments, or papers
15 that have been registered pursuant to this chapter and
16 that pertain to deregistered land:

17 (A) A mortgage;

18 (B) An agreement of sale for the sale of a fee time
19 share interest or interest in other deregistered
20 land. After the recordation of the certificate
21 of title, any agreement of sale shall be subject



1 to section 502-85 and shall not be subject to
2 section 501-101.5;

3 (C) A correction deed, correction mortgage, or other
4 document, instrument, or paper correcting a
5 document, instrument, or paper registered
6 pursuant to this chapter;

7 (D) A lien or claim of lien on a fee time share
8 interest held or claimed by a time share owners
9 association, an association of apartment owners,
10 or other homeowners' association or a lien or
11 claim on an interest in other deregistered land
12 held by a lienor or person claiming a lien;

13 (E) A lease that demises a fee time share interest or
14 interest in other deregistered land;

15 (F) An order of court, attachment, writ, or other
16 process against a fee time share interest or
17 interest in other deregistered land;

18 (G) A mechanic's or materialman's lien or other lien
19 upon a fee time share interest or interest in
20 other deregistered land;

21 (H) A lis pendens or notice of pendency of action,
22 notice, affidavit, demand, certificate,



1 execution, copy of execution, officer's return,
2 or other instrument relating to a fee time share
3 interest or interest in other deregistered land
4 and otherwise required or permitted to be
5 recorded or registered in connection with the
6 enforcement or foreclosure of any lien, whether
7 by way of power of sale pursuant to [~~a power of~~
8 ~~sale under section 667-5,~~] chapter 667 or
9 otherwise; or

10 (I) A power of attorney given by the owner of a fee
11 time share interest or interest in other
12 deregistered land or the vendor or vendee under
13 an agreement of sale for the sale of a fee time
14 share interest or interest in other deregistered
15 land, a mortgagee or other lienor having a
16 mortgage or lien upon a fee time share interest
17 or interest in other deregistered land, or
18 another party holding a claim or encumbrance
19 against or an interest in a fee time share
20 interest or interest in other deregistered land;

21 (2) A lis pendens or notice of pendency of action, notice,
22 affidavit, demand, certificate, execution, copy of



1 execution, officer's return, or other instrument
2 relating to a fee time share interest or interest in
3 other deregistered land and otherwise required or
4 permitted to be recorded or registered in connection
5 with the enforcement or foreclosure of any lien,
6 whether by way of power of sale pursuant to [~~a power~~
7 ~~of sale under section 667-5,~~] chapter 667 or
8 otherwise; and

9 (3) Any declaration annexing property to, any declaration
10 deannexing property from, any amendment or supplement
11 to, correction of, or release or termination of, any
12 of the following documents, instruments, or papers
13 that have been registered pursuant to this chapter and
14 that pertain to deregistered land:

15 (A) A declaration of covenants, conditions,
16 restrictions, or similar instrument, by whatever
17 name denominated, establishing or governing a
18 time share plan, or the bylaws of a time share
19 owners association, notice of time share plan, or
20 other time share instrument;

21 (B) A declaration of condominium property regime or
22 similar declaration by whatever name denominated,



1 the bylaws of the association of apartment
2 owners, the condominium map, any declaration of
3 merger and any instrument effecting a merger;
4 provided that if only some of the condominium
5 apartments are included in the time share plan,
6 then it shall be necessary to register, and to
7 note on the certificate of title for any
8 apartment not included in the time share plan:

- 9 (i) Any declaration annexing property to the
10 condominium property regime;
11 (ii) Any declaration deannexing property from the
12 condominium property regime;
13 (iii) Any instrument effecting a merger of two or
14 more condominium projects or two or more
15 phases of a condominium project; and
16 (iv) Any document, instrument, or paper amending,
17 supplementing, correcting, releasing, or
18 terminating any of the documents listed in
19 subparagraph (B)(i) through (iii), the
20 declaration of condominium property regime,
21 the bylaws of the association of apartment



1 owners, the condominium map, or any

2 declaration of merger; and

3 (C) A declaration of covenants, conditions,
4 restrictions, or similar instrument, by whatever
5 name denominated, the bylaws of any homeowners
6 association, any declaration of annexation or
7 deannexation, any amendments and supplements
8 thereto, and any cancellation or extinguishment
9 thereof, any declaration of merger and any
10 instrument effecting a merger; provided that if
11 only some of the parcels of land covered by the
12 declaration constitutes deregistered land, and if
13 one or more of the remaining parcels constitute
14 registered land, then it shall be necessary to
15 register, and to note on the certificate of title
16 for any registered land:

17 (i) Any declaration annexing property to the
18 declaration;

19 (ii) Any declaration deannexing property from the
20 operation of the declaration; and

21 (iii) Any document, instrument, or paper amending,
22 supplementing, correcting, releasing, or



1 terminating any of the documents listed in
2 subparagraph (C)(i) or (ii), the declaration
3 of covenants, conditions, restrictions, or
4 the bylaws of the homeowners association."

5 SECTION 9. Section 514A-90, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsections (a) and (b) to read:

8 "(a) All sums assessed by the association of apartment
9 owners but unpaid for the share of the common expenses chargeable
10 to any apartment constitute a lien on the apartment prior to all
11 other liens, except:

12 (1) Liens for taxes and assessments lawfully imposed by
13 governmental authority against the apartment; and

14 (2) All sums unpaid on any mortgage of record that was
15 recorded prior to the recordation of notice of a lien
16 by the association of apartment owners, and costs and
17 expenses including attorneys' fees provided in such
18 mortgages[-];

19 provided that a lien recorded by an association of apartment
20 owners for unpaid assessments shall expire six years from the
21 date of recordation unless proceedings to enforce the lien are
22 instituted prior to the expiration of the lien; provided further



1 that the expiration of a recorded lien shall in no way affect
2 the association of apartment owners' automatic lien that arises
3 pursuant to this subsection or the declaration or bylaws. Any
4 proceedings to enforce an association of apartment owners' lien
5 for any assessment shall be instituted within six years after
6 the assessment became due; provided that if the owner of an
7 apartment subject to a lien of the association of apartment
8 owners files a petition for relief under the United States
9 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
10 instituting proceedings to enforce the association of apartment
11 owners' lien shall be tolled until thirty days after the
12 automatic stay of proceedings under section 362 of the United
13 States Bankruptcy Code (11 U.S.C. §362) is lifted.

14 The lien of the association of apartment owners may be
15 foreclosed by action or by nonjudicial or power of sale
16 foreclosure procedures set forth in chapter 667, by the managing
17 agent or board of directors, acting on behalf of the association
18 of apartment owners[~~, in like manner as a mortgage of real~~
19 ~~property.~~] and in the name of the association of apartment
20 owners; provided that no association of apartment owners may
21 exercise the nonjudicial or power of sale remedies provided in
22 chapter 667 to foreclose a lien against any apartment that



1 arises solely from fines, penalties, legal fees, or late fees,
2 and the foreclosure of any such lien shall be filed in court
3 pursuant to part IA of chapter 667.

4 In any such foreclosure, the apartment owner shall be
5 required to pay a reasonable rental for the apartment, if so
6 provided in the bylaws[7] or the law, and the plaintiff in the
7 foreclosure shall be entitled to the appointment of a receiver to
8 collect the rental owed[-] by the apartment owner or any tenant of
9 the apartment. If the association of apartment owners is the
10 plaintiff, it may request that its managing agent be appointed as
11 receiver to collect the rent from the tenant. The managing agent
12 or board of directors, acting on behalf of the association of
13 apartment owners[7] and in the name of the association of
14 apartment owners, unless prohibited by the declaration, may bid on
15 the apartment at foreclosure sale, and acquire and hold, lease,
16 mortgage, and convey the apartment. Action to recover a money
17 judgment for unpaid common expenses shall be maintainable without
18 foreclosing or waiving the lien securing the unpaid common
19 expenses owed.

20 (b) Except as provided in subsection (g), when the mortgagee
21 of a mortgage of record or other purchaser of an apartment obtains
22 title to the apartment as a result of foreclosure of the mortgage,



1 the acquirer of title and the acquirer's successors and assigns
2 shall not be liable for the share of the common expenses or
3 assessments by the association of apartment owners chargeable to
4 the apartment [~~which~~] that became due prior to the acquisition of
5 title to the apartment by the acquirer. The unpaid share of
6 common expenses or assessments shall be deemed to be common
7 expenses collectible from all of the apartment owners, including
8 the acquirer and the acquirer's successors and assigns. The
9 mortgagee of record or other purchaser of the apartment shall be
10 deemed to acquire title and shall be required to pay the
11 apartment's share of common expenses and assessments beginning:

12 (1) Thirty-six days after the order confirming the sale to
13 the purchaser has been filed with the court;

14 (2) Sixty days after the hearing at which the court grants
15 the motion to confirm the sale to the purchaser;

16 (3) Thirty days after the public sale in a nonjudicial
17 power of sale foreclosure conducted pursuant to
18 [~~section 667-5;~~] chapter 667; or

19 (4) Upon the recording of the instrument of conveyance,
20 whichever occurs first; provided that the mortgagee of record or
21 other purchaser of the apartment shall not be deemed to acquire
22 title under paragraph (1), (2), or (3), if transfer of title is



1 delayed past the thirty-six days specified in paragraph (1), the
2 sixty days specified in paragraph (2), or the thirty days
3 specified in paragraph (3), when a person who appears at the
4 hearing on the motion or a party to the foreclosure action
5 requests reconsideration of the motion or order to confirm sale,
6 objects to the form of the proposed order to confirm sale,
7 appeals the decision of the court to grant the motion to confirm
8 sale, or the debtor or mortgagor declares bankruptcy or is
9 involuntarily placed into bankruptcy. In any such case, the
10 mortgagee of record or other purchaser of the apartment shall be
11 deemed to acquire title upon recordation of the instrument of
12 conveyance."

13 2. By amending subsections (h) and (i) to read:

14 "(h) The amount of the special assessment assessed under
15 subsection (g) shall not exceed the total amount of unpaid
16 regular monthly common assessments that were assessed during the
17 ~~[twelve]~~ six months immediately preceding the completion of the
18 judicial or nonjudicial power of sale foreclosure. ~~[In no event~~
19 ~~shall the amount of the special assessment exceed the sum of~~
20 ~~\$7,200-]~~

21 (i) For purposes of subsections (g) and (h), the following
22 definitions shall apply:



1 "Completion" means:

- 2 (1) In a nonjudicial power of sale foreclosure, when
3 the affidavit [~~required under section 667-5 is~~
4 ~~filed;~~] after public sale is recorded pursuant to
5 section 667-33; and
6 (2) In a judicial foreclosure, when a purchaser is
7 deemed to acquire title pursuant to subsection
8 (b).

9 "Regular monthly common assessments" shall not include:

- 10 (1) Any other special assessment, except for a special
11 assessment imposed on all apartments as part of a
12 budget adopted pursuant to section 514A-83.6;
13 (2) Late charges, fines, or penalties;
14 (3) Interest assessed by the association of apartment
15 owners;
16 (4) Any lien arising out of the assessment; or
17 (5) Any fees or costs related to the collection or
18 enforcement of the assessment, including
19 attorneys' fees and court costs."

20 SECTION 10. Section 514B-146, Hawaii Revised Statutes, is
21 amended as follows:

- 22 1. By amending subsections (a) and (b) to read:



1 "(a) All sums assessed by the association but unpaid for
2 the share of the common expenses chargeable to any unit shall
3 constitute a lien on the unit with priority over all other
4 liens, except:

5 (1) Liens for taxes and assessments lawfully imposed by
6 governmental authority against the unit; and

7 (2) All sums unpaid on any mortgage of record that was
8 recorded prior to the recordation of a notice of a
9 lien by the association, and costs and expenses
10 including attorneys' fees provided in such
11 mortgages[-];

12 provided that a lien recorded by an association for unpaid
13 assessments shall expire six years from the date of recordation
14 unless proceedings to enforce the lien are instituted prior to
15 the expiration of the lien; provided further that the expiration
16 of a recorded lien shall in no way affect the association's
17 automatic lien that arises pursuant to this subsection or the
18 declaration or bylaws. Any proceedings to enforce an
19 association's lien for any assessment shall be instituted within
20 six years after the assessment became due; provided that if the
21 owner of a unit subject to a lien of the association files a
22 petition for relief under the United States Bankruptcy Code (11



1 U.S.C. §101 et seq.), the period of time for instituting
2 proceedings to enforce the association's lien shall be tolled
3 until thirty days after the automatic stay of proceedings under
4 section 362 of the United States Bankruptcy Code (11 U.S.C.
5 §362) is lifted.

6 The lien of the association may be foreclosed by action or
7 by nonjudicial or power of sale foreclosure procedures set forth
8 in chapter 667, by the managing agent or board, acting on behalf
9 of the association[, ~~in like manner as a mortgage of real~~
10 ~~property.~~] and in the name of the association; provided that no
11 association may exercise the nonjudicial or power of sale
12 remedies provided in chapter 667 to foreclose a lien against any
13 unit that arises solely from fines, penalties, legal fees, or
14 late fees, and the foreclosure of any such lien shall be filed
15 in court pursuant to part IA of chapter 667.

16 In any such foreclosure, the unit owner shall be required
17 to pay a reasonable rental for the unit, if so provided in the
18 bylaws[7] or the law, and the plaintiff in the foreclosure shall
19 be entitled to the appointment of a receiver to collect the
20 rental owed[-] by the unit owner or any tenant of the unit. If
21 the association is the plaintiff, it may request that its
22 managing agent be appointed as receiver to collect the rent from



1 the tenant. The managing agent or board, acting on behalf of
2 the association[7] and in the name of the association, unless
3 prohibited by the declaration, may bid on the unit at
4 foreclosure sale, and acquire and hold, lease, mortgage, and
5 convey the unit. Action to recover a money judgment for unpaid
6 common expenses shall be maintainable without foreclosing or
7 waiving the lien securing the unpaid common expenses owed.

8 (b) Except as provided in subsection (g), when the
9 mortgagee of a mortgage of record or other purchaser of a unit
10 obtains title to the unit as a result of foreclosure of the
11 mortgage, the acquirer of title and the acquirer's successors
12 and assigns shall not be liable for the share of the common
13 expenses or assessments by the association chargeable to the
14 unit [~~which~~] that became due prior to the acquisition of title
15 to the unit by the acquirer. The unpaid share of common
16 expenses or assessments shall be deemed to be common expenses
17 collectible from all of the unit owners, including the acquirer
18 and the acquirer's successors and assigns. The mortgagee of
19 record or other purchaser of the unit shall be deemed to acquire
20 title and shall be required to pay the unit's share of common
21 expenses and assessments beginning:



1 (1) Thirty-six days after the order confirming the sale to
2 the purchaser has been filed with the court;
3 (2) Sixty days after the hearing at which the court grants
4 the motion to confirm the sale to the purchaser;
5 (3) Thirty days after the public sale in a nonjudicial
6 power of sale foreclosure conducted pursuant to
7 ~~[section 667-5;]~~ chapter 667; or
8 (4) Upon the recording of the instrument of conveyance;
9 whichever occurs first; provided that the mortgagee of record or
10 other purchaser of the unit shall not be deemed to acquire title
11 under paragraph (1), (2), or (3), if transfer of title is
12 delayed past the thirty-six days specified in paragraph (1), the
13 sixty days specified in paragraph (2), or the thirty days
14 specified in paragraph (3), when a person who appears at the
15 hearing on the motion or a party to the foreclosure action
16 requests reconsideration of the motion or order to confirm sale,
17 objects to the form of the proposed order to confirm sale,
18 appeals the decision of the court to grant the motion to confirm
19 sale, or the debtor or mortgagor declares bankruptcy or is
20 involuntarily placed into bankruptcy. In any such case, the
21 mortgagee of record or other purchaser of the unit shall be



1 deemed to acquire title upon recordation of the instrument of
2 conveyance."

3 2. By amending subsections (h) and (i) to read:

4 "(h) The amount of the special assessment assessed under
5 subsection (g) shall not exceed the total amount of unpaid
6 regular monthly common assessments that were assessed during the
7 ~~[twelve]~~ six months immediately preceding the completion of the
8 judicial or nonjudicial power of sale foreclosure. ~~[In no event~~
9 ~~shall the amount of the special assessment exceed the sum of~~
10 ~~\$7,200.]~~

11 (i) For purposes of subsections (g) and (h), the following
12 definitions shall apply, unless the context requires otherwise:

13 "Completion" means:

14 (1) In a nonjudicial power of sale foreclosure, when the
15 affidavit ~~[required under section 667-5 is filed;]~~
16 after public sale is recorded pursuant to section 667-
17 33; and

18 (2) In a judicial foreclosure, when a purchaser is deemed
19 to acquire title pursuant to subsection (b).

20 "Regular monthly common assessments" does not include:



(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(4) Any lien arising out of the assessment; or

(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs."

SECTION 11. Section 607-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The fees prescribed by the schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1), (2), or (9), to proceedings under chapter 333F or 334, to small estates including decedents' estates and protection of property of minors and persons under disability when the amount payable is fixed by another statute[7



~~or to nonjudicial foreclosures converted to judicial proceedings~~
~~pursuant to section 667-53; and];~~ provided further that the fees
prescribed by subsection (c) (32) shall be deposited by the clerk
of the circuit court into the judiciary computer system special
fund pursuant to section 601-3.7[-]; provided further that the
fees prescribed by subsection (b) (1a) shall be deposited by the
clerk of the circuit court as provided in section 667-53(a) (6).

For the purpose of this section, "judgment" includes a
decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a
new number or filed under the number previously assigned to a
probate, trust, guardianship, or conservatorship, shall carry a
fee for the institution or transfer of the action or proceeding
as prescribed by part I, and in addition the fees prescribed by
part II unless otherwise provided.

(b) PART I

Action or proceeding, general:

- (1) Civil action or special proceeding, unless
another item in part I applies \$200
- (1a) Petition for conversion of nonjudicial
foreclosure to judicial foreclosure \$250



- 1 (2) Appeal to a circuit court \$100
- 2 (3) Transfer of action to circuit court from district
- 3 court, in addition to district court fees \$125
- 4 Trusts:
- 5 (4) Proceeding for (A) appointment of trustee; (B)
- 6 appointment of successor; (C) resignation of
- 7 trustee; (D) instructions; (E) approval of
- 8 investment; (F) approval of sale, mortgage,
- 9 lease, or other disposition of property; (G)
- 10 approval of compromise of claim, for each such
- 11 matter \$100
- 12 (5) Proceeding for (A) removal of trustee; (B) order
- 13 requiring accounting; (C) invalidation of action
- 14 taken by trustee; (D) termination of trust, for
- 15 each such matter \$100
- 16 (6) Accounting, this fee to be paid for each account
- 17 filed and to include the settlement of the
- 18 account \$10
- 19 (7) Vesting order no charge under part I
- 20 (8) Allowance of fees of trustees, attorneys, or
- 21 other fees for services incurred in a



1 proceeding for which a fee has been paid
2 under this section no charge under part I
3 (8a) Registration of a trust, or release of
4 registration, under chapter 560 \$3
5 (9) Any other proceeding relating to a trust \$15
6 Conservatorship:
7 (10) Proceeding for (A) appointment; (B) appointment
8 of successor; (C) resignation; (D) instructions,
9 unless included in one of the foregoing
10 proceedings; (E), (F), (G) approval of any matter
11 listed in (E), (F), or (G) of item (4) in
12 relation to a trust, for each such matter \$100
13 (11) Proceeding of the nature listed in (A), (B), (C),
14 or (D) of item (5) in relation to a trust, for
15 each such matter \$15
16 (12) Accounting, same as provided by item (6) in
17 relation to a trust \$10
18 (13) Any other proceeding relating to a
19 conservatorship no charge under part I
20 Guardianship:



1 (13a) Guardianship, including all matters of the nature
2 listed in items (4) to (9), whether in family or
3 circuit court \$100

4 Probate (decedents' estates). These fees include all matters of
5 the nature listed in items (4) to (9), without additional
6 charge:

7 (14) Probate, administration, domiciliary foreign
8 personal representative, or ancillary
9 administration, this fee to be paid once only for
10 each decedent's estate \$100

11 Family court cases:

12 (15) Matrimonial action (annulment, divorce,
13 separation, or separate maintenance) \$100

14 (16) Adoption \$100

15 (17) Guardianship, including all matters of the nature
16 listed in items (4) to (9) ... As provided in item 13(a)

17 (18) Termination of parental rights .. no charge under part I

18 (19) Any other family court proceeding, except motions or
19 other pleadings in matrimonial, adoption, and
20 guardianship actions, but including without limitation
21 custody proceedings even if in the form of an habeas
22 corpus proceeding \$15"



SECTION 12. Section 667-3, Hawaii Revised Statutes, is amended to read as follows:

"§667-3 Proceeds, how applied. Mortgage and other creditors shall be entitled to payment according to the priority of their liens, and not pro rata; and judgments of foreclosure ~~[and foreclosures by power of sale]~~ that are conducted in compliance with this part ~~[and for which an affidavit is recorded as required under section 667-5]~~ shall operate to extinguish the liens of subsequent mortgages and liens of the same property, without forcing prior mortgagees or lienors to their right of recovery. The surplus after payment of the mortgage foreclosed, shall be applied pro tanto to the next junior mortgage or lien, and so on to the payment, wholly or in part, of mortgages and liens junior to the one assessed."

SECTION 13. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

"§667-5.5 Foreclosure notice; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by registered or certified mail,



1 the board of directors of the planned community association, the
2 association of owners of the condominium project, or the
3 cooperative housing project in which the property to be
4 foreclosed is located, of the following:

5 (1) The foreclosure at the time foreclosure proceedings
6 are begun[-]; and

7 (2) Any election by an owner-occupant of the property that
8 is the subject of the foreclosure to participate in
9 the mortgage foreclosure dispute resolution program
10 under part V.

11 The notice, at a minimum, shall identify the property,
12 condominium apartment or unit, or cooperative apartment that is
13 the subject of the foreclosure and identify the name or names of
14 the person or persons bringing foreclosure proceedings. [~~This~~
15 ~~section~~] Paragraph (1) shall not apply if the planned community
16 association, condominium association of owners, or cooperative
17 housing corporation is a party in a foreclosure action. This
18 section shall not affect civil proceedings against parties other
19 than the planned community association, association of owners,
20 or cooperative housing corporation."

21 SECTION 14. Section 667-10, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§667-10 Power unaffected by transfer; surplus after sale.**

2 No sale or transfer by the mortgagor shall impair or annul any
3 right or power of attorney given in the mortgage to the
4 mortgagee to sell or transfer the mortgaged property, as
5 attorney or agent of the mortgagor, except as otherwise provided
6 by chapters 501 and 502. When public sale is made of the
7 mortgaged property under this part, distribution of the proceeds
8 of the sale shall be as specified in section 667-3, and the
9 remainder of the proceeds, if any, shall be paid over to the
10 owner of the mortgaged property, after deducting the amount of
11 ~~[claim]~~ all claims and all expenses attending the same."

12 SECTION 15. Section 667-21, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§667-21 ~~[Alternate power]~~ Power of sale process**~~[+]~~
15 ~~definitions. (a)]~~. The power of sale process in this part is
16 an alternative ~~[power of sale process]~~ to the foreclosure by
17 action ~~[and the foreclosure by power of sale]~~ in part ~~[I.]~~ IA.

18 ~~[(b) As used in this part:~~

19 ~~"Approved budget and credit counselor" means a budget and~~
20 ~~credit counseling agency that has received approval from a~~
21 ~~United States trustee or bankruptcy administrator to provide~~



1 ~~instructional courses concerning personal financial management~~
2 ~~pursuant to Title 11 United States Code, section 111.~~

3 ~~"Approved housing counselor" means a housing counseling~~
4 ~~agency that has received approval from the United States~~
5 ~~Department of Housing and Urban Development to provide housing~~
6 ~~counseling services pursuant to section 106(a)(2) of the Housing~~
7 ~~and Urban Development Act of 1968, Title 12 United States Code,~~
8 ~~section 1701x.~~

9 ~~"Association" has the same meaning as the term is defined~~
10 ~~in section 514B-3.~~

11 ~~"Borrower" means the borrower, maker, cosigner, or~~
12 ~~guarantor under a mortgage agreement.~~

13 ~~"Foreclosing mortgagee" means the mortgagee that intends to~~
14 ~~conduct a power of sale foreclosure; provided that the mortgagee~~
15 ~~is a federally insured bank, a federally insured savings and~~
16 ~~loan association, a federally insured savings bank, a depository~~
17 ~~financial services loan company, a nondepository financial~~
18 ~~services loan company, a credit union insured by the National~~
19 ~~Credit Union Administration, a bank holding company, a foreign~~
20 ~~lender as defined in section 207-11, or an institutional~~
21 ~~investor as defined in section 454-1.~~



1 ~~Unless the context clearly indicates otherwise, as used in~~
2 ~~this part, a "foreclosing mortgagee" shall encompass all of the~~
3 ~~following entities:~~

4 ~~(1) The foreclosing mortgagee;~~

5 ~~(2) Any person that has an ownership interest in the~~
6 ~~promissory note on the mortgage agreement or a~~
7 ~~security interest represented by the mortgage for the~~
8 ~~subject property;~~

9 ~~(3) Any mortgage servicer, who services the mortgage loan~~
10 ~~of the mortgagor; and~~

11 ~~(4) The agents, employees, trustees, and representatives~~
12 ~~of a lender, the foreclosing mortgagee, a mortgagee,~~
13 ~~and a mortgage servicer.~~

14 ~~"Mailed" means to be sent by regular mail, postage prepaid,~~
15 ~~and by certified, registered, or express mail, postage prepaid~~
16 ~~and return receipt requested.~~

17 ~~"Mortgage" means a mortgage, security agreement, or other~~
18 ~~document under which property is mortgaged, encumbered, pledged,~~
19 ~~or otherwise rendered subject to a lien for the purpose of~~
20 ~~securing the payment of money or the performance of an~~
21 ~~obligation.~~



1 ~~"Mortgage agreement" includes the mortgage, the note or~~
2 ~~debt document, or any document amending any of the foregoing.~~

3 ~~"Mortgaged property" means the property that is subject to~~
4 ~~the lien of the mortgage.~~

5 ~~"Mortgagee" means the current holder of record of the~~
6 ~~mortgagee's or the lender's interest under the mortgage, or the~~
7 ~~current mortgagee's or lender's duly authorized agent.~~

8 ~~"Mortgagor" means the mortgagor or borrower named in the~~
9 ~~mortgage and, unless the context otherwise indicates, includes~~
10 ~~the current owner of record of the mortgaged property whose~~
11 ~~interest is subject to the mortgage.~~

12 ~~"Nonjudicial foreclosure" means foreclosure under power of~~
13 ~~sale.~~

14 ~~"Open house" means a public showing of the mortgaged~~
15 ~~property during a scheduled time period.~~

16 ~~"Owner-occupant" means a person, at the time that a notice~~
17 ~~of default and intention to foreclose is served on the mortgagor~~
18 ~~under the power of sale:~~

19 ~~(1) Who owns an interest in the residential property, and~~
20 ~~the interest is encumbered by the mortgage being~~
21 ~~foreclosed; and~~



~~(2) For whom the residential property is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.~~

~~"Power of sale" or "power of sale foreclosure" means a nonjudicial foreclosure under this part when the mortgage contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure.~~

~~"Property" means property (real, personal, or mixed), an interest in property (including fee simple, leasehold, life estate, reversionary interest, and any other estate under applicable law), or other interests that can be subject to the lien of a mortgage.~~

~~"Record" or "recorded" means a document is recorded or filed with the office of the assistant registrar of the land court under chapter 501 or recorded with the registrar of conveyances under chapter 502, or both, as applicable.~~

~~"Residential property" means real property that is improved and used for residential purposes.~~

~~"Served" means to have service of the notice of default and intention to foreclose made in accordance with the service of~~



1 ~~process or the service of summons under the Hawaii rules of~~
2 ~~civil procedure, and under sections 634-35 and 634-36.]"~~

3 SECTION 16. Section 667-21.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§667-21.5[+] Foreclosure notice; planned communities;
6 condominiums; cooperative housing projects. Notwithstanding any
7 law or agreement to the contrary, any person who forecloses on a
8 property under this part within a planned community, a
9 condominium apartment or unit, or an apartment in a cooperative
10 housing project shall notify, by way of registered or certified
11 mail, the board of directors of the planned community
12 association, the association of owners of the condominium
13 project, or the cooperative housing project in which the
14 property to be foreclosed is located, of the following:

- 15 (1) The foreclosure at the time foreclosure proceedings
16 are begun[-]; and
- 17 (2) Any election by an owner-occupant of the property that
18 is the subject of the foreclosure to participate in
19 the mortgage foreclosure dispute resolution program
20 under part V.

21 The notice, at a minimum, shall identify the property,
22 condominium apartment or unit, or cooperative apartment that is



1 the subject of the foreclosure and identify the name or names of
2 the person or persons bringing foreclosure proceedings. [~~This~~
3 ~~section~~] Paragraph (1) shall not apply when the planned
4 community association, condominium association of owners, or
5 cooperative housing corporation is a party in a foreclosure
6 action. This section shall not affect civil proceedings against
7 parties other than the planned community association,
8 association of owners, or cooperative housing corporation."

9 SECTION 17. Section 667-22, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsections (a) and (b) to read:

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

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

20 (2) The name and last known address of ~~[all]~~ the
21 mortgagors, the borrowers, and any guarantors;

22 (3) ~~[The]~~ With respect to the mortgaged property, the



1 address or a description of [~~the~~] its location [~~of the~~
2 ~~mortgaged property, the~~], tax map key number, and
3 [~~the~~] certificate of title or transfer certificate of
4 title number if [~~within the jurisdiction of~~]
5 registered in the land court[, ~~of the mortgaged~~
6 ~~property~~];

7 (4) The description of the default or, if the default is a
8 monetary default, an itemization of the delinquent
9 amount;

10 (5) The action required to cure the default, including the
11 delinquent amount and the estimated amount of the
12 foreclosing mortgagee's attorney's fees and costs, and
13 all other fees and costs related to the default
14 estimated to be incurred by the foreclosing mortgagee
15 by the deadline date;

16 (6) The date by which the default must be cured, which
17 shall be at least sixty days after the date of the
18 notice of default and intention to foreclose;

19 (7) A statement that if the default is not cured by the
20 deadline date stated in the notice of default and
21 intention to foreclose, the entire unpaid balance of
22 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 publish the
10 public notice of the public sale in a newspaper of
11 general circulation or on a state website, pursuant to
12 section 667-27(d);

13 [~~(8)~~] (9) The name, address, electronic address, and
14 telephone number of the attorney who is representing
15 the foreclosing mortgagee; provided that the attorney
16 shall be licensed to practice law in the State and
17 physically located in the State; and

18 [~~(9)~~] (10) Notice of the right of the owner-occupant to
19 elect to participate in any other process as
20 established by law.

21 (b) The notice of default and intention to foreclose shall
22 also contain wording substantially similar to the following in



1 all capital letters and printed in not less than fourteen-point
2 font:

3 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE
4 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY
5 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
6 AND WITHOUT GOING TO COURT.

7 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.
8 FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY
9 LICENSED IN THIS STATE.

10 ~~[AFTER THE DEADLINE DATE IN THIS NOTICE, TWO~~
11 ~~PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE~~
12 ~~LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS~~
13 ~~(OWNERS) OF THE PROPERTY WHO ALSO CURRENTLY RESIDE AT~~
14 ~~THE PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS~~
15 ~~RESIDING AT THE PROPERTY AGREE TO ALLOW TWO OPEN~~
16 ~~HOUSES BY THE LENDER, THEY MUST SIGN A LETTER SHOWING~~
17 ~~THEY AGREE. THE SIGNED LETTER MUST BE SENT TO THIS~~
18 ~~OFFICE AT THE ADDRESS GIVEN IN THIS NOTICE.~~

19 ~~THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED~~
20 ~~LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE~~
21 ~~SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED~~
22 ~~MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE~~



1 ~~PREPAID AND RETURN RECEIPT REQUESTED.~~

2 ~~IF THE SIGNED LETTER IS NOT RECEIVED BY THIS~~
3 ~~OFFICE BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE~~
4 ~~SOLD WITHOUT ANY OPEN HOUSES BEING HELD.~~

5 ~~EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO~~
6 ~~ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE~~
7 ~~PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO~~
8 ~~ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD~~
9 ~~WITHOUT ANY OPEN HOUSES BEING HELD.]~~

10 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE
11 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED
12 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO
13 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT
14 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO
15 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
16 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
17 REQUESTED."

18 2. By amending subsections (d) and (e) to read:

19 "(d) The notice of default and intention to foreclose
20 shall also include contact information for [~~local~~] approved
21 housing counselors and approved budget and credit counselors.

22 (e) The foreclosing mortgagee shall have the notice of



1 default and intention to foreclose served on:

2 (1) The mortgagor and the borrower [~~in the same manner as~~
3 ~~service of a civil complaint under chapter 634 or the~~
4 ~~Hawaii rules of civil procedure, as they may be~~
5 ~~amended from time to time~~];

6 (2) Any prior or junior creditors who have a recorded lien
7 on the mortgaged property before the recordation of
8 the notice of default and intention to foreclose under
9 section 667-23;

10 (3) The state director of taxation;

11 (4) The director of finance of the county where the
12 mortgaged property is located;

13 (5) The department of commerce and consumer affairs, by
14 filing the notice with the department when required;
15 and

16 (6) Any other person entitled to receive notice under this
17 part."

18 SECTION 18. Section 667-24, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§667-24 Cure of default. (a) If the default is cured as
21 required by the notice of default and intention to foreclose, or
22 if the parties have reached [~~a settlement document,~~] an



1 agreement to resolve the nonjudicial foreclosure, the
2 foreclosing mortgagee shall rescind the notice of default and
3 intention to foreclose. Within fourteen days of the date of the
4 cure or [~~a settlement document reached by the parties,~~] an
5 agreement to resolve the nonjudicial foreclosure, the
6 foreclosing mortgagee shall so notify any person who was served
7 with the notice of default and intention to foreclose. If the
8 notice of default and intention to foreclose was recorded, a
9 release of the notice of default and intention to foreclose
10 shall be recorded.

11 (b) If the default is not cured as required by the notice
12 of default and intention to foreclose, the parties have not
13 reached [~~a settlement document pursuant to part V~~] an agreement
14 to resolve the nonjudicial foreclosure and no report of
15 noncompliance has been issued against the mortgagee under
16 section 667-82, and the mortgagor has not elected to convert the
17 foreclosure to a judicial action, the foreclosing mortgagee,
18 without filing a court action and without going to court, may
19 foreclose the mortgage under power of sale to sell the mortgaged
20 property at a public sale."

21 SECTION 19. Section 667-25, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) The public sale of the mortgaged property shall be
2 held only in the county where the mortgaged property is located;
3 provided that the public sale shall be held only on grounds or
4 at facilities under the administration of the State, as follows:

5 (1) At the state capitol, for a public sale of mortgaged
6 property located in the city and county of Honolulu;

7 (2) At a state facility in Hilo, for a public sale of
8 mortgaged property located in the [~~eastern portion of~~
9 ~~the county of Hawaii;~~] districts of Hamakua, north
10 Hilo, south Hilo, or Puna;

11 (3) At a state facility in Kailua-Kona, for a public sale
12 of mortgaged property located in the [~~western portion~~
13 ~~of the county of Hawaii;~~] districts of north Kohala,
14 south Kohala, north Kona, south Kona, or Kau;

15 (4) At a state facility in the county seat of Maui, for a
16 public sale of mortgaged property located in the
17 county of Maui; and

18 (5) At a state facility in the county seat of Kauai, for a
19 public sale of mortgaged property located in the
20 county of Kauai;

21 as designated by the department of accounting and general
22 services; provided further that no public sale shall be held on



1 grounds or at facilities under the administration of the
2 judiciary. The public sale shall be held during business hours
3 on a business day."

4 SECTION 20. Section 667-27, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§667-27 Public notice of public sale; contents;**
7 **distribution; publication.** (a) The foreclosing mortgagee shall
8 prepare the public notice of the public sale. The public notice
9 shall state:

- 10 (1) The date, time, and place of the public sale;
11 ~~[(2) The dates and times of the two open houses of the~~
12 ~~mortgaged property, or if there will not be any open~~
13 ~~houses, the public notice shall so state;~~
14 ~~+(3)]~~ (2) The unpaid balance of the moneys owed to the
15 mortgagee under the mortgage agreement;
16 ~~[(4)]~~ (3) A description of the mortgaged property,
17 including the address and the tax map key number of
18 the mortgaged property;
19 ~~[(5)]~~ (4) The name of the mortgagor and the borrower;
20 ~~[(6)]~~ (5) The name of the foreclosing mortgagee;
21 ~~[(7)]~~ (6) The name of any prior or junior creditors having
22 a recorded lien on the mortgaged property before the



1 recordation of the notice of default and intention to
2 foreclose under section 667-23;

3 ~~[(+8)]~~ (7) The name, the address in the State, and the
4 telephone number in the State of the person in the
5 State conducting the public sale; and

6 ~~[(+9)]~~ (8) The terms and conditions of the public sale~~[+and~~
7 ~~(10) An estimate of the opening bid]~~.

8 (b) The public notice shall also contain wording
9 substantially similar to the following in all capital letters:

10 "THE DEFAULT UNDER THE MORTGAGE AGREEMENT MAY BE CURED
11 NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF
12 THE PUBLIC SALE OF THE MORTGAGED PROPERTY BY PAYING
13 THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE
14 FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE
15 MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE
16 FORECLOSING MORTGAGEE'S ATTORNEY'S FEES AND COSTS, AND
17 ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING
18 MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE
19 AGREED TO BETWEEN THE FORECLOSING MORTGAGEE AND THE
20 BORROWER. THERE IS NO RIGHT TO CURE THE DEFAULT OR
21 ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE



1 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE
2 CANCELED."

3 (c) If the default is not cured as required by the notice
4 of default and intention to foreclose, the foreclosing mortgagee
5 shall have a copy of the public notice of the public sale of the
6 mortgaged property:

7 (1) Mailed or delivered to the mortgagor and the borrower
8 at their respective last known addresses;

9 (2) Mailed or delivered to any prior or junior creditors
10 having a recorded lien on the mortgaged property
11 before the recordation of the notice of default and
12 intention to foreclose under section 667-23;

13 (3) Mailed or delivered to the state director of taxation;

14 (4) Mailed or delivered to the director of finance of the
15 county where the mortgaged property is located;

16 (5) Posted on the mortgaged property or on such other real
17 property of which the mortgaged property is a part;
18 and

19 (6) Mailed or delivered to any other person entitled to
20 receive notice under section 667-5.5 or 667-21.5.

21 (d) The foreclosing mortgagee shall have the public notice
22 of the public sale [~~printed~~]:



1 (1) Printed in not less than seven-point font and
2 published in the classified section of a [daily]
3 newspaper [~~having the largest~~] of general circulation
4 [specifically] in the [~~county where the mortgaged~~
5 ~~property is located; provided that for property~~
6 ~~located in a county with a population of more than one~~
7 ~~hundred thousand but less than three hundred thousand,~~
8 ~~the public notice shall be published in the newspaper~~
9 ~~having the largest general circulation specifically in~~
10 ~~the western or eastern half of the county, as the case~~
11 ~~may be, in which the property is located.]~~ geographic
12 area in which the mortgaged property is located. A
13 person may apply to the circuit court for an order
14 confirming a newspaper to be of general circulation
15 for purposes of this paragraph, which the court shall
16 grant upon proof of compliance with this paragraph.
17 The public notice shall be published once each week
18 for three consecutive weeks, constituting three
19 publications. The public sale shall take place no
20 sooner than fourteen days after the date of the
21 publication of the third public notice
22 advertisement[~~-~~]; 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:

5 (A) If the mortgaged property is owned by an owner-
6 occupant, the public notice shall be published on
7 a website maintained by the department. The
8 department shall publish the public notice
9 pursuant to this subparagraph upon satisfaction
10 of the filing requirements of section 667-76(b);
11 and

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

15 (e) As used in subsection (d):

16 "General circulation" refers to a newspaper that:

17 (1) Contains news of a general nature; and

18 (2) Is distributed within the geographic area where the
19 mortgaged property is located:

20 (A) At least weekly;



1 (B) For a minimum of one year unless interrupted by
2 strike, natural disaster, or act of war or
3 terror; and

4 (C) To a minimum of three per cent of the residents
5 of the geographic area, as determined by the last
6 decennial United States census and as verified by
7 an independent audit.

8 "Geographic area" means:

9 (1) The real property tax zone of the mortgaged property,
10 as shown on the real property tax maps kept by the
11 real property tax assessment division of the county of
12 Hawaii, if the mortgaged property is located in the
13 county of Hawaii; or

14 (3) The county in which the mortgaged property is located,
15 if the mortgaged property is located in the city and
16 county of Honolulu or the county of Maui or Kauai."

17 SECTION 21. Section 667-28, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The public sale may be either postponed or canceled
20 by the foreclosing mortgagee. Notice of the postponement or the
21 cancellation of the public sale shall be [announced];



1 (1) Announced by the foreclosing mortgagee at the date,
2 time, and place of the last scheduled public sale[-];
3 and

4 (2) Provided to any other person who is entitled to
5 receive the notice of default under section 667-22."

6 SECTION 22. Section 667-32, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The recitals in the affidavit required under
9 subsection (a) may, but need not, be substantially in the
10 following form:

11 "(1) I am duly authorized to represent or act on behalf of
12 _____ (name of mortgagee) ("foreclosing
13 mortgagee") regarding the following power of sale
14 foreclosure. I am signing this affidavit in
15 accordance with the [~~alternate~~] power of sale
16 foreclosure [~~law~~] process (Chapter 667, Part II,
17 Hawaii Revised Statutes);

18 (2) The foreclosing mortgagee is a [~~"foreclosing~~
19 ~~mortgagee"~~] mortgagee as defined in [~~the power of sale~~
20 ~~foreclosure law~~]; section 667-1, Hawaii Revised
21 Statutes, conducting a power of sale foreclosure;

22 (3) The power of sale foreclosure is of a mortgage made by



1 _____ (name of mortgagor)
2 ("mortgagor"), dated _____, and
3 recorded in the _____ (bureau of
4 conveyances or office of the assistant registrar of
5 the land court) as _____ (recording
6 information). The mortgaged property is located at:
7 _____ (address or description of
8 location) and is identified by tax map key number:
9 _____. The legal description of the
10 mortgaged property, including the certificate of title
11 or transfer certificate of title number if registered
12 in the land court, is attached as Exhibit "A". The
13 name of the borrower, if different from the mortgagor,
14 is _____ ("borrower");
15 (4) Pursuant to the power of sale provision of the
16 mortgage, the power of sale foreclosure was conducted
17 as required by the power of sale foreclosure law. The
18 following is a summary of what was done:
19 (A) A notice of default and intention to foreclose
20 was served on the mortgagor, the borrower, and
21 the following person: _____. The
22 notice of default and intention to foreclose was



1 served on the following date and in the following
2 manner: _____;

3 (B) The date of the notice of default and intention
4 to foreclose was _____ (date).
5 The deadline in the notice for curing the default
6 was _____ (date), which deadline
7 date was at least sixty days after the date of
8 the notice;

9 (C) The notice of default and intention to foreclose
10 was recorded before the deadline date in the
11 _____ (bureau of conveyances or
12 office of the assistant registrar of the land
13 court). The notice was recorded on
14 _____ (date) as document no.
15 _____. A copy of the recorded
16 notice is attached as Exhibit "1";

17 (D) The default was not cured by the deadline date in
18 the notice of default and intention to foreclose;

19 (E) A public notice of the public sale was initially
20 published in the classified section of the
21 _____, ~~[a daily newspaper of~~
22 ~~general circulation in the county where the~~



1 ~~mortgaged property is located,~~ in accordance
2 with section 667-27(d), Hawaii Revised Statutes,
3 once each week for three consecutive weeks on the
4 following dates: _____. A copy
5 of the affidavit of publication for the last
6 public notice of the public sale is attached as
7 Exhibit "2". The date of the public sale was
8 _____ (date). The last
9 publication was not less than fourteen days
10 before the date of the public sale;

11 (F) The public notice of the public sale was sent to
12 the mortgagor, to the borrower, to the state
13 director of taxation, to the director of finance
14 of the county where the mortgaged property is
15 located, and to the following:
16 _____. The public notice was sent
17 on the following dates and in the following
18 manner: _____. Those dates were
19 after the deadline date in the notice of default
20 and intention to foreclose, and those dates were
21 at least sixty days before the date of the public
22 sale;



(G) The public notice of the public sale was posted on the mortgaged property or on such other real property of which the mortgaged property is a part on _____ (date). That date was at least sixty days before the date of the public sale;

~~[(H)] Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooperate);~~

~~[(I)]~~ (H) A public sale of the mortgaged property was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of \$ _____; and

~~[(J)]~~ (I) At the time the public sale was held, the default was not cured and there was no circuit court foreclosure action pending in the circuit where the mortgaged property is located; and

(5) This affidavit is signed under penalty of perjury."



1 SECTION 23. Section 667-33, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The affidavit required under section 667-32 and the
4 conveyance document shall be recorded [~~at any time~~] no earlier
5 than ten days after the public sale is held but not later than
6 forty-five days after the public sale is held. The affidavit
7 and the conveyance document may be recorded separately and on
8 different days. After the recordation, the foreclosing
9 mortgagee shall mail or deliver a recorded copy to those persons
10 entitled to receive the public notice of the public sale under
11 section 667-27(c)."

12 SECTION 24. Section 667-37, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§667-37 Judicial action of foreclosure before public**
15 **sale.** This part shall not prohibit [~~the borrower,~~] the
16 foreclosing mortgagee, or any other creditor having a recorded
17 lien on the mortgaged property before the recordation of the
18 notice of default under section 667-23, from filing an action
19 for the judicial foreclosure of the mortgaged property in the
20 circuit court of the circuit where the mortgaged property is
21 located[-]; provided that the action is filed before the public
22 sale is held. The power of sale foreclosure process shall be



1 stayed during the pendency of the circuit court foreclosure
2 action."

3 SECTION 25. Section 667-38, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+]§667-38[] Recordation; full satisfaction of debt by~~
6 ~~borrower.]~~ Deficiency judgment against owner-occupant
7 prohibited. ~~[The recordation of both the conveyance document~~
8 ~~and the affidavit shall operate as full satisfaction of the debt~~
9 ~~owed by the borrower to the foreclosing mortgagee even if the~~
10 ~~foreclosing mortgagee receives nothing from the sale proceeds,~~
11 ~~unless the debt is secured by other collateral, or except as~~
12 ~~otherwise provided by law.]~~ Upon completion of the nonjudicial
13 foreclosure of residential property pursuant to this part, the
14 mortgagee or other person, excluding an association, shall not
15 be entitled to pursue or obtain a deficiency judgment against an
16 owner-occupant unless the debt is secured by other collateral.
17 The debts of other lien creditors are unaffected except as
18 provided in this part."

19 SECTION 26. Section 667-41, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§667-41 Public information notice requirement.

22 ~~[Beginning on September 1, 2011, all]~~ (a) All financial



1 institutions, mortgagees, lenders, business entities and
2 organizations without limitation, and persons, who intend to use
3 the power of sale foreclosure under this part, under the
4 conditions required by this part, shall ~~[also develop~~
5 ~~informational materials to educate and inform borrowers and~~
6 ~~mortgagors. These materials shall be made available to the~~
7 ~~public and provided to the mortgagors of all mortgage agreements~~
8 ~~entered into, including the borrowers at the time of application~~
9 ~~for a mortgage or loan, or other contract containing a power of~~
10 ~~sale foreclosure provision. These materials, among other~~
11 ~~things, shall inform the borrower that the financial institution~~
12 ~~and other business entities and persons who are authorized under~~
13 ~~this part to exercise the power of sale foreclosure, in the~~
14 ~~event of the borrower's default, have the option of pursuing~~
15 ~~either a judicial or nonjudicial foreclosure as provided by law.~~
16 ~~These informational materials shall fully and completely explain~~
17 ~~these remedies in simple and understandable terms.]~~ provide the
18 public information notice described in subsection (b) to the
19 public, upon request, and to any applicant submitting a loan
20 application where residential property is required to be used to
21 secure the loan. The notice shall be provided to all applicants
22 and all owners of the residential property (if different from



1 the applicants) within three business days after the submission
2 of a written loan application, or within three business days
3 after the time residential property is required to be used to
4 secure a loan, whether or not there is a written loan
5 application. The purpose of the public information notice is to
6 inform the public, applicants, and others that the financial
7 institutions, mortgagees, lenders, organizations, and other
8 business entities and persons who are authorized under this part
9 to enforce the foreclosure rights in a mortgage, in the event of
10 the borrower's default, have the option of pursuing either a
11 judicial or nonjudicial foreclosure in the manner provided by
12 law.

13 (b) The public information notice requirement shall be
14 satisfied by the delivery of a separate notice that contains the
15 following wording and is printed in not less than fourteen-point
16 font:

17 PUBLIC INFORMATION NOTICE PURSUANT TO

18 HAWAII REVISED STATUTES SECTION 667-41

19 WHAT IS FORECLOSURE?

20 This notice informs you regarding a lender's
21 right to foreclose in the event of a default on the



1 loan you have applied for or are considering if your
2 home is used to secure its repayment.

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

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

19 STEP ONE: NOTICE OF DEFAULT. The first step in
20 the foreclosure process is the Mortgagee usually sends
21 you a written notice of default, which occurs after
22 you are past due on your mortgage payment. The



1 Mortgagee will tell you in the notice how much time
2 you have to pay the required amount that is past due
3 and, by paying, will return your loan to good
4 standing.

5 STEP TWO: PROCEEDING TO FORECLOSURE. If you do
6 not pay the required amount past due by the deadline
7 in the notice of default, the Mortgagee may elect to
8 proceed to collect the balance due on your loan
9 through foreclosure. In Hawaii, there are two types
10 of foreclosures: judicial and nonjudicial.

11 In a JUDICIAL FORECLOSURE, the Mortgagee files a
12 lawsuit against you in order to obtain a court
13 judgment that you owe the balance due under your loan
14 and to obtain an order to sell the property. The
15 initial legal document you will receive in the lawsuit
16 is called the complaint. You should consult an
17 attorney of your choice who can advise you as to the
18 steps needed to protect your rights. Judicial
19 foreclosure involves the sale of the mortgaged
20 property under the supervision of the court. You will
21 receive notice of the foreclosure case hearings and
22 the sale date and the judicial decision is announced



1 after a hearing in court. The sale of the property
2 must be approved by the court before it can be
3 completed.

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

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

17 In a NONJUDICIAL foreclosure, if you own an
18 interest in the property you may have the right to
19 participate in the Mortgage Foreclosure Dispute
20 Resolution Program or to convert the nonjudicial
21 foreclosure into a judicial foreclosure. The
22 nonjudicial foreclosure may not proceed during the



1 dispute resolution process or after it has been
2 converted to a judicial foreclosure.

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

10 STEP THREE: PUBLIC SALE. The sale of a
11 foreclosed home is usually made through a public
12 auction, where the highest bidder who can make a cash
13 deposit of up to 10% of the bid can buy the property.
14 In a judicial foreclosure, the court appoints a third
15 party commissioner to advertise and conduct the sale.
16 In a nonjudicial foreclosure, the Mortgagee advertises
17 and conducts the sale. In both types of sales, the
18 Mortgagee has the right to buy the property by
19 submitting a credit bid based upon the balance owed on
20 the mortgage, so long as its bid is higher than any
21 other bids. If the Mortgagee buys the property, the



1 Mortgagee has the right to re-sell it in a private
2 sale at a later date.

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

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

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

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



1 (c) The requirements of this section shall apply only to
2 written loan applications submitted, or to loans where
3 residential property is required to be used as security, after
4 August 31, 2012."

5 SECTION 27. Section 667-53, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) An owner-occupant of a residential property that is
8 subject to nonjudicial foreclosure under part [~~I-04~~] II may
9 convert the action to a judicial foreclosure provided that:

10 (1) A petition conforming to section 667-54 shall be filed
11 with the circuit court in the circuit where the
12 residential property is located, stating that the
13 owner-occupant of the property elects to convert the
14 nonjudicial foreclosure to a judicial foreclosure
15 proceeding, no later than thirty days after the
16 foreclosure notice is served on the owner-occupant, as
17 required by section [~~667-5-04~~] 667-22;

18 (2) Within forty-five days of the filing of the petition,
19 all owner-occupants and mortgagors of an interest in
20 the residential property whose interests are pledged
21 or otherwise encumbered by the mortgage that is being
22 foreclosed and all persons who have signed the



1 promissory note or other instrument evidencing the
2 debt secured by the mortgage that is being foreclosed,
3 including without limitation co-obligors and
4 guarantors, shall file a statement in the circuit
5 court action that they agree to submit themselves to
6 the judicial process and the jurisdiction of the
7 circuit court; provided further that if this condition
8 is not satisfied, the circuit court action may be
9 dismissed with prejudice as to the right of any owner-
10 occupant to convert the action to a judicial
11 proceeding, and the mortgagee may proceed
12 nonjudicially;

13 (3) Filing a petition pursuant to paragraph (1) shall
14 automatically stay the nonjudicial foreclosure action
15 unless and until the judicial proceeding has been
16 dismissed;

17 (4) The person filing the petition pursuant to paragraph
18 (1) shall have an affirmative duty to promptly notify
19 the Hawaii attorney who is handling the nonjudicial
20 foreclosure about the filing of the complaint for
21 conversion;

22 (5) All parties joined in the converted judicial



1 proceeding may assert therein any claims and defenses
2 that they could have asserted had the action
3 originally been commenced as a judicial foreclosure
4 action; and

5 (6) ~~[Notwithstanding chapter 607, the]~~ The fee for filing
6 the petition shall be ~~[not more than \$525, of which]~~
7 \$250, which shall be deposited into the mortgage
8 foreclosure dispute resolution special fund
9 established under section 667-86~~[-; provided that if~~
10 ~~the mortgage foreclosure dispute resolution program~~
11 ~~under part V has not yet been implemented, the filing~~
12 ~~fee shall be not more than \$300]~~.

13 (b) This section shall not apply to foreclosures of
14 association liens that arise under a declaration filed pursuant
15 to chapter 421J, 514A, or 514B."

16 SECTION 28. Section 667-54, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "[+](a)[+] A petition filed pursuant to section 667-53
19 shall contain at a minimum:

20 (1) A caption setting forth the name of the court, the
21 title of the action, and the file number; provided
22 that the title of the action shall include the names



1 of the filing party as petitioner and the foreclosing
2 party as the respondent;

3 (2) The name, mailing address, and telephone number of the
4 filing party;

5 (3) The address or tax map key number, and the certificate
6 of title or transfer certificate of title number if
7 ~~[within the land court's jurisdiction,]~~ registered in
8 the land court, of the property subject to the
9 foreclosure action;

10 (4) A statement identifying all other owner-occupants and
11 mortgagors of the property whose interests are pledged
12 or otherwise encumbered by the mortgage that is being
13 foreclosed and all persons who have signed the
14 promissory note or other instrument evidencing the
15 debt secured by the mortgage that is being foreclosed,
16 including without limitation co-obligors and
17 guarantors;

18 (5) A certification under penalty of perjury that the
19 filing party is an owner-occupant of the subject
20 property and seeks to convert the nonjudicial
21 foreclosure to a judicial proceeding;

22 (6) A statement certifying that the filing party served a



1 copy of the petition on the attorney identified in the
2 foreclosure notice under section [~~667-5-or~~] 667-22
3 either by personal delivery at, or by postage prepaid
4 United States mail to, the address of the attorney as
5 set forth in the foreclosure notice under section
6 [~~667-5-or~~] 667-22; and

7 (7) A copy of the foreclosure notice that was served on
8 the filing party pursuant to section [~~667-5-or~~] 667-22
9 and for which the filing party is seeking to convert
10 to a judicial proceeding."

11 SECTION 29. Section 667-55, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~+~~]**\$667-55[+]** Notice of default and intention to
14 foreclose; residential property; required statement on
15 conversion. (a) The foreclosure notice that is served as
16 required under section [~~667-5-or~~] 667-22 shall include, in
17 addition to the contents required under section [~~667-5-or~~] 667-
18 22, a statement printed in not less than fourteen-point font as
19 follows:

20 "IF THE PROPERTY BEING FORECLOSED IS
21 IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN
22 OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN



1 CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A
2 PERSON WHO, AT THE TIME THIS NOTICE IS SERVED,
3 OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT
4 IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND
5 THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY
6 RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO
7 HUNDRED DAYS) HAS THE RIGHT TO CONVERT A
8 NONJUDICIAL FORECLOSURE PROCEEDING TO A JUDICIAL
9 FORECLOSURE WHERE CLAIMS AND DEFENSES MAY BE
10 CONSIDERED BY A COURT OF LAW. TO EXERCISE THIS
11 RIGHT, THE OWNER-OCCUPANT SHALL COMPLETE AND FILE
12 THE ATTACHED FORM WITH THE CIRCUIT COURT IN THE
13 CIRCUIT WHERE THE PROPERTY IS LOCATED, WITHIN
14 THIRTY DAYS AFTER SERVICE OF THIS NOTICE.

15 IN ADDITION, ALL OWNER-OCCUPANTS AND
16 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE
17 INTERESTS HAVE BEEN PLEDGED OR OTHERWISE
18 ENCUMBERED BY THE MORTGAGE THAT IS BEING
19 FORECLOSED AND ALL PERSONS WHO HAVE SIGNED THE
20 PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING
21 THE DEBT SECURED BY THE MORTGAGE THAT IS BEING
22 FORECLOSED, INCLUDING, WITHOUT LIMITATION, CO-



1 OBLIGORS AND GUARANTORS, SHALL FILE A STATEMENT
2 IN THE CIRCUIT COURT ACTION THAT THEY AGREE TO
3 SUBMIT TO THE JUDICIAL PROCESS AND THE
4 JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-
5 FIVE DAYS OF THE FILING OF THE ATTACHED FORM.
6 FAILURE TO SATISFY THIS CONDITION MAY RESULT IN
7 DISMISSAL OF THE CIRCUIT COURT ACTION WITH
8 PREJUDICE.

9 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE
10 HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE
11 FILING OF THE CONVERSION FORM.

12 MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE
13 AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN
14 ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID
15 FORECLOSURE OR TO MITIGATE THE EFFECTS OF
16 FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF [AN
17 ~~OWNER-OCCUPANT FILES FOR CONVERSION,~~] THE
18 NONJUDICIAL FORECLOSURE IS CONVERTED TO A JUDICIAL
19 FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT
20 THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

21 A FORECLOSING LENDER WHO COMPLETES A
22 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY



1 ~~[SHALL]~~ COULD BE PROHIBITED UNDER HAWAII LAW FROM
2 PURSUING A DEFICIENCY JUDGMENT AGAINST A
3 MORTGAGOR ~~[UNLESS THE DEBT IS SECURED BY OTHER~~
4 ~~COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW]~~. IF
5 THIS ACTION IS CONVERTED TO A JUDICIAL
6 PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE
7 TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT
8 TO SEEK A DEFICIENCY JUDGMENT.

9 (b) The statement required by this section shall not be
10 required to be included in ~~[the notice of sale published~~
11 ~~pursuant to 667-5(a)(1) or]~~ the public notice of public sale
12 published pursuant to section 667-27."

13 SECTION 30. Section 667-56, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~[+]§667-56[+]~~ **Prohibited conduct.** It shall be a
16 prohibited practice for any foreclosing mortgagee to engage in
17 any of the following practices:

- 18 (1) Holding a public sale on a date, at a time, or at a
19 place other than that described in the public notice
20 of the public sale or a properly noticed postponement;
21 (2) Specifying a fictitious place in the public notice of
22 the public sale;



- 1 (3) Conducting a postponed public sale on a date other
2 than the date described in the new public notice of
3 the public sale;
- 4 (4) Delaying the delivery of the recorded, conformed copy
5 of the conveyance document to a bona fide purchaser
6 who purchases in good faith for more than [~~forty-five~~]
7 sixty days after the completion of the public sale;
- 8 (5) Completing nonjudicial foreclosure proceedings during
9 short sale escrows with a bona fide purchaser if the
10 short sale offer is at least [~~five~~] ten per cent
11 greater than the public sale price; provided that
12 escrow is opened within ten days and closed within
13 forty-five days of the public sale; and provided
14 further that a bona fide short sale purchaser shall
15 have priority over any other purchaser;
- 16 (6) Completing nonjudicial foreclosure proceedings during
17 bona fide loan modification negotiations with the
18 mortgagor; or
- 19 (7) Completing nonjudicial foreclosure proceedings against
20 a mortgagor who has been accepted or is being
21 evaluated for consideration for entry into [~~a~~] any
22 federal loan modification program before obtaining a



1 certificate or other documentation confirming that the
2 mortgagor is no longer eligible for, or an active
3 participant of, that federal program."

4 SECTION 31. Section 667-57, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~f~~]**\$667-57[~~f~~]** **Suspension of foreclosure actions by junior**
7 **lienholders.** (a) Upon initiation of a foreclosure action
8 pursuant to part [~~f~~] IA or part II by a foreclosing mortgagee
9 [~~as defined in section 667-21(b)~~], no junior lienholder shall be
10 permitted to initiate or continue a nonjudicial foreclosure
11 [~~pursuant to part I~~] until the foreclosure initiated by the
12 foreclosing mortgagee has been concluded by a judgment issued by
13 a court pursuant to section [~~667-1,~~] 667-1.5, the recording of
14 an affidavit after public sale pursuant to section [~~667-5 or~~]
15 667-33, or the filing of [~~a settlement document~~] an agreement
16 under the mortgage foreclosure dispute resolution provisions of
17 section 667-81.

18 (b) Upon initiation of a foreclosure action pursuant to
19 [~~part I or~~] part II by a foreclosing mortgagee [~~as defined in~~
20 ~~section 667-21(b)~~], no junior lienholder shall be permitted to
21 initiate or continue a nonjudicial foreclosure [~~pursuant to part~~
22 ~~II~~] during the pendency of a stay pursuant to section 667-83;



1 provided that a junior lienholder may initiate or continue with
2 a nonjudicial foreclosure [~~pursuant to part II~~] if [~~the~~]:

3 (1) The junior lien foreclosure was initiated before the
4 foreclosure action by the foreclosing mortgagee[-]; or

5 (2) The junior lienholder is an association and has not
6 been provided notice of the foreclosure action,
7 pursuant to section 667-21.5, or has not received
8 written notification of a case opening pursuant to
9 section 667-79."

10 SECTION 32. Section 667-58, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[+]~~§667-58~~[+]~~ Valid notice[-]; affiliate statement. (a)

13 Any notices made pursuant to this chapter may be issued only by
14 persons authorized by a foreclosing mortgagee or lender pursuant
15 to an affiliate statement signed by that foreclosing mortgagee
16 or lender and recorded at the bureau of conveyances identifying
17 the agency or affiliate relationship and the authority granted
18 or conferred to that agent or representative.

19 (b) The bureau of conveyances document number for the
20 affiliate statement required under subsection (a) shall be
21 included in any notice required to be personally served upon the
22 mortgagor or borrower under this chapter.



1 (c) Any notice provided by a mortgage servicer, including
2 an agent, employee, or representative of that mortgage servicer,
3 shall be issued only by a mortgage servicer that has been listed
4 in the affiliate statement filed by the foreclosing mortgagee or
5 lender under subsection (a); provided further that the mortgage
6 servicer shall be licensed under or otherwise exempt from
7 chapter 454M. The agency relationship or affiliation of the
8 mortgage servicer and the foreclosing mortgagee or lender and
9 any authority granted or conferred to that mortgage servicer
10 shall be described in the affiliate statement filed under both
11 subsection (a) and section 454M-5(a)(4)(F).

12 (d) No attorney of a mortgage servicer, foreclosing
13 mortgagee, or lender shall be required to be included in any
14 affiliate statement of a foreclosing mortgagee or lender. No
15 notice or other correspondence made by any attorney for the
16 foreclosing mortgagee or lender shall be required to reference
17 any affiliate statement made by the foreclosing mortgagee or
18 lender. Any notice or other correspondence made by any attorney
19 for a mortgage servicer shall reference, in accordance with
20 subsection (b), the appropriate affiliate statement of the
21 foreclosing mortgagee or lender authorizing the mortgage
22 servicer to act."



1 SECTION 33. Section 667-59, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§667-59[+] Actions and communications with the
4 mortgagor in connection with a foreclosure. A foreclosing
5 mortgagee shall be bound by all agreements, obligations,
6 representations, or inducements made on its behalf by its
7 agents, including but not limited to its employees,
8 representatives, mortgage servicers, or persons authorized by a
9 foreclosing mortgagee or lender pursuant to an affiliate
10 statement recorded in the bureau of conveyances pursuant to
11 section 667-58.

12 ~~[For purposes of this section, "foreclosing mortgagee" has~~
13 ~~the same meaning as in section 667-21.]"~~

14 SECTION 34. Section 667-60, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§667-60[+] Unfair or deceptive act or practice[-];
17 transfer of title. (a) Any foreclosing mortgagee who
18 ~~[violates]~~ engages in any of the following violations of this
19 chapter shall have committed an unfair or deceptive act or
20 practice under section 480-2[-]:



- 1 (1) Failing to provide a borrower or mortgagor with, or
2 failing to serve as required, the information required
3 by section 667-22 or 667-55;
- 4 (2) Failing to publish, or to post, information on the
5 mortgaged property, as required by section 667-27 or
6 667-28;
- 7 (3) Failing to take any action required by section 667-24
8 if the default is cured or an agreement is reached;
- 9 (4) Engaging in conduct prohibited under section 667-56;
- 10 (5) Holding a public sale in violation of section 667-25;
- 11 (6) Failing to include in a public notice of public sale
12 the information required by section 667-27 or section
13 667-28;
- 14 (7) Failing to provide the information required by section
15 667-41;
- 16 (8) With regard to mortgage foreclosure dispute resolution
17 under part V:
- 18 (A) Failing to provide notice of the availability of
19 dispute resolution as required by section 667-75;
- 20 (B) Participating in dispute resolution without
21 authorization to negotiate a loan modification,



1 or without access to a person so authorized, as
2 required by section 667-80(a)(1);

3 (C) Failing to provide required information or
4 documents as required by section 667-80(c); or

5 (D) Completing a nonjudicial foreclosure if a
6 neutral's closing report under section 667-82
7 indicates that the foreclosing mortgagee failed
8 to comply with requirements of the mortgage
9 foreclosure dispute resolution program;

10 (9) Completing a nonjudicial foreclosure while a stay is
11 in effect under section 667-83;

12 (10) Failing to distribute sale proceeds as required by
13 section 667-31;

14 (11) Making any false statement in the affidavit of public
15 sale required by section 667-32;

16 (12) Attempting to collect a deficiency in violation of
17 section 667-38; and

18 (13) Failing to file a foreclosure notice with the
19 department as required by section 667-76(a).

20 (b) Notwithstanding subsection (a), the transfer of title
21 to the purchaser of the property as a result of a foreclosure
22 under this chapter shall only be subject to avoidance under



1 section 480-12 for violations described in subsection (a)(1) to
2 (9) if such violations are shown to be substantial and material;
3 provided that a foreclosure sale shall not be subject to
4 avoidance under section 480-12 for violation of section 667-
5 56(5).

6 (c) Any action to void the transfer of title to the
7 purchaser of property pursuant to a foreclosure by power of sale
8 under part II of this chapter shall be filed in the circuit
9 court of the circuit within which the foreclosed property is
10 situated no later than sixty days following the recording of the
11 affidavit required by section 667-32. If no such action is
12 filed within the sixty-day period, then title to the property
13 shall be deemed conclusively vested in the purchaser free and
14 clear of any claim by the mortgagor or anyone claiming by,
15 through, or under the mortgagor."

16 SECTION 35. Section 667-63, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) A mortgage creditor having a mortgage lien on a time
19 share interest who desires notice that another mortgage creditor
20 having a mortgage lien on the time share interest intends to
21 foreclose and sell the mortgaged time share interest, pursuant
22 to the power of sale under section 667-62, may submit a written



1 request to the mortgagee who is foreclosing or who may foreclose
2 the mortgage by power of sale, asking to receive notice of the
3 mortgagee's intention to foreclose the mortgage under section
4 667-62. The request for notice:

- 5 (1) May be submitted any time after the recordation [~~or~~
6 ~~filing~~] of the subject mortgage [~~at the bureau of~~
7 ~~conveyances or the land court, but shall be~~]; provided
8 that the request is submitted prior to completion of
9 publication of notice of the intention to foreclose
10 the mortgage and of the sale of the mortgaged time
11 share interest;
- 12 (2) Shall be signed by the mortgage creditor desiring to
13 receive notice, or its authorized representative; and
- 14 (3) Shall specify the name and address of the person to
15 whom the notice is to be mailed."

16 SECTION 36. Section 667-71, Hawaii Revised Statutes, is
17 amended by amending subsections (a) and (b) to read as follows:

18 "(a) This part shall apply to nonjudicial foreclosures
19 conducted by power of sale under [~~parts I and~~] part II, of
20 residential real property that is occupied by one or more
21 mortgagors who are owner-occupants.



(b) This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise under a declaration filed pursuant to chapter 421J, 514A, or 514B, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan."

SECTION 37. Section 667-73, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department is authorized to contract with county, state, or federal agencies, and with private organizations, approved housing counselors, and approved budget and credit counselors for the performance of any of the functions of this part. These contracts shall not be subject to chapter 103D or 103F."

SECTION 38. Section 667-74, Hawaii Revised Statutes, is amended to read as follows:

"[+]§667-74[+] Availability of dispute resolution required before foreclosure. Before a public sale may be conducted pursuant to section ~~[667-5 or]~~ 667-25 for a residential property that is occupied by an owner-occupant ~~[as a primary residence]~~, the foreclosing mortgagee ~~[shall]~~, at the election of the owner-occupant, shall participate in the mortgage foreclosure dispute



1 resolution program under this part to attempt to negotiate an
2 agreement that avoids foreclosure or mitigates damages in cases
3 where foreclosure is unavoidable."

4 SECTION 39. Section 667-75, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§667-75[+] Notice of dispute resolution availability
7 required. (a) A foreclosure notice served pursuant to section
8 [~~667-5 or~~] 667-22(e) shall include notice that the mortgagee is
9 required, at the election of an owner-occupant, to participate
10 in the mortgage foreclosure dispute resolution program pursuant
11 to this part to attempt to avoid foreclosure or to mitigate
12 damages where foreclosure is unavoidable.

13 (b) The notice required by subsection (a) shall be printed
14 in not less than fourteen-point font and include:

15 (1) The name and contact information of the mortgagor and
16 the mortgagee;

17 (2) The subject property address and legal description,
18 including tax map key number and the certificate of
19 title or transfer certificate of title number if
20 [~~within the land court's jurisdiction;~~] registered in
21 the land court;

22 (3) The name and contact information of a person or entity



1 authorized to negotiate a loan modification on behalf
2 of the mortgagee;

3 (4) A statement that the mortgagor shall consult with an
4 approved housing counselor or an approved budget and
5 credit counselor at least thirty days prior to the
6 first day of a scheduled dispute resolution session;

7 (5) Contact information for all [~~local~~] approved housing
8 counselors;

9 (6) Contact information for all [~~local~~] approved budget
10 and credit counselors;

11 (7) A statement that the mortgagor electing to participate
12 in the mortgage foreclosure dispute resolution program
13 shall provide a certification under penalty of perjury
14 to the department that the mortgagor is an owner-
15 occupant of the subject property, including supporting
16 documentation;

17 (8) A general description of the information that an
18 owner-occupant electing to participate in the mortgage
19 foreclosure dispute resolution program is required to
20 provide to participate in the program as described
21 under section 667-80(c)(2);



(9) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department's mailing of the notice or the right shall be waived."

SECTION 40. Section 667-76, Hawaii Revised Statutes, is amended to read as follows:

"[+]§667-76[+] Mortgagee's filing of notice with department; filing fee[-]; electronic public notice of public

sale. (a) Within three days after a mortgagee serves a foreclosure notice on an owner-occupant pursuant to section [667-5 or] 667-22, the mortgagee shall file the foreclosure notice with the department and pay a filing fee of \$250, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-86.

(b) ~~[Violation of this section shall constitute an unfair and deceptive act or practice subject to section 480-2.]~~ A mortgagee who elects to publish a public notice of public sale electronically pursuant to section 667-27(d)(2)(A) shall publish the notice by filing the same with the department and paying a filing fee of \$300, which shall be deposited into the mortgage



1 foreclosure dispute resolution special fund established under
2 section 667-86."

3 SECTION 41. Section 667-77, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§667-77[+] Notification to mortgagor by department.

6 Within ten days after the mortgagee's filing of a notice of
7 default and intention to foreclose with the department, the
8 department shall mail a written notification by registered or
9 certified mail to the mortgagor that a notice of default and
10 intention to foreclose has been filed with the department. The
11 notification shall inform the mortgagor of an owner-occupant's
12 right to elect to participate in the foreclosure dispute
13 resolution program and shall include:

14 (1) Information about the mortgage foreclosure dispute
15 resolution program;

16 (2) A form for an owner-occupant to elect or to waive
17 participation in the mortgage foreclosure dispute
18 resolution program pursuant to this part that shall
19 contain instructions for the completion and return of
20 the form to the department and the department's
21 mailing address;

22 (3) A statement that the mortgagor electing to participate



1 in the mortgage foreclosure dispute resolution program
2 shall provide a certification under penalty of perjury
3 to the department that the mortgagor is an owner-
4 occupant of the subject property, including a
5 description of acceptable supporting documentation as
6 required by section 667-78(a)(2);

7 (4) A statement that the owner-occupant shall elect to
8 participate in the mortgage foreclosure dispute
9 resolution program pursuant to this part no later than
10 thirty days after the department's mailing of the
11 notice or the owner-occupant shall be deemed to have
12 waived the option to participate in the mortgage
13 foreclosure dispute resolution program;

14 (5) A description of the information required under
15 section 667-80(c)(2) that the owner-occupant shall
16 provide to the mortgagee and the neutral assigned to
17 the dispute resolution;

18 (6) A statement that the owner-occupant shall consult with
19 an approved housing counselor or approved budget and
20 credit counselor at least thirty days prior to the
21 first day of a scheduled dispute resolution session;

22 (7) Contact information for all [~~local~~] approved housing



1 counselors;

2 (8) Contact information for all [~~local~~] approved budget
3 and credit counselors; and

4 (9) Contact information for the department.

5 The notification shall be mailed to the subject property address
6 and any other addresses for the mortgagor as provided in the
7 mortgagee's notice of dispute resolution under [+]section[+]
8 667-75 and the foreclosure notice under section [~~667-5-or~~] 667-
9 22(a)."

10 SECTION 42. Section 667-78, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) An owner-occupant elects to participate in the
14 mortgage foreclosure dispute resolution program by returning to
15 the department:

16 (1) The completed program election form provided
17 [~~pursuant~~]:

18 (A) Pursuant to section 667-77(2); or

19 (B) On a website maintained by the department;

20 (2) Certification under penalty of perjury that the
21 mortgagor is an owner-occupant, accompanied with any
22 supporting documentation, including copies of recent



1 utility billing statements, voter registration
2 records, real estate property tax records, or state
3 identification forms; and

4 (3) A program fee of \$300.

5 The completed form and fees shall be received by the department
6 no later than thirty days after mailing of the department's
7 notification pursuant to section 667-77."

8 2. By amending subsection (c) to read:

9 "(c) If the owner-occupant does not elect to participate
10 in dispute resolution pursuant to this part, the department
11 shall notify the mortgagee within ten days of receiving an
12 election form indicating nonelection or the termination of the
13 thirty-day time period for election. After receiving the
14 department's notification, the mortgagee may proceed with the
15 nonjudicial foreclosure process according to the process
16 provided in [~~part I or~~] part II of this chapter[, as
17 applicable]."

18 SECTION 43. Section 667-79, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:

21 "(a) If an owner-occupant elects to participate in the
22 mortgage foreclosure dispute resolution program, the department



1 shall open a dispute resolution case. Within twenty days of
2 receipt of the owner-occupant's election form and fee in
3 accordance with section 667-78, the department shall mail
4 written notification of the case opening to the parties and, if
5 applicable, the condominium or other homeowner association of
6 the project where the owner-occupant's property is located, by
7 registered mail, return receipt requested, which shall include:

8 (1) Notification of the date, time, and location of the
9 dispute resolution session;

10 (2) An explanation of the dispute resolution process;

11 (3) Information about the dispute resolution program
12 requirements; and

13 (4) Consequences and penalties for noncompliance.

14 The dispute resolution session shall be scheduled for a date no
15 less than ~~[thirty]~~ forty and no more than ~~[sixty]~~ seventy days
16 from the date of the notification of case opening, unless
17 mutually agreed to by the parties and the neutral."

18 2. By amending subsection (c) to read:

19 "(c) The written notification of a case opening under this
20 section shall operate as a stay of the foreclosure proceeding in
21 accordance with section 667-83[7] and may be ~~[filed or]~~



1 recorded[, ~~as appropriate, at the land court or bureau of~~
2 ~~conveyances~~]."

3 SECTION 44. Section 667-80, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) The parties to a dispute resolution process conducted
7 under this part shall consist of the owner-occupant or the
8 owner-occupant's representative, and the mortgagee or the
9 mortgagee's representative; provided that:

10 (1) A representative of the mortgagee who participates in
11 the dispute resolution shall be authorized to
12 negotiate a loan modification on behalf of the
13 mortgagee or shall have, at all stages of the dispute
14 resolution process, direct access by telephone,
15 videoconference, or other immediately available
16 contemporaneous telecommunications medium to a person
17 who is so authorized;

18 (2) The mortgagee and owner-occupant may be represented by
19 ~~[counsel]~~ an attorney; and

20 (3) The owner-occupant may be assisted by an approved
21 housing counselor or approved budget and credit
22 counselor."



1 2. By amending subsection (c) to read:

2 "(c) The parties shall comply with all information
3 requests from the department or neutral. No less than fifteen
4 days prior to the first day of the scheduled dispute resolution
5 session:

6 (1) The mortgagee shall provide to the department and the
7 mortgagor:

8 (A) A copy of the promissory note, signed by the
9 mortgagor, including any endorsements, allonges,
10 amendments, or riders to the note evidencing the
11 mortgage debt;

12 (B) A copy of the mortgage document and any
13 amendments, riders, or other documentation
14 evidencing the mortgagee's right of nonjudicial
15 foreclosure and interest in the property
16 including any interest as a successor or
17 assignee; and

18 (C) Financial records and correspondence that confirm
19 the mortgage loan is in default.

20 (2) The owner-occupant shall provide to the department and
21 the mortgagee:

22 (A) Documentation showing income qualification for a



1 loan modification, including any copies of pay
2 stubs, W-2 forms, social security or disability
3 income, retirement income, child support income,
4 or any other income that the owner-occupant deems
5 relevant to the owner-occupant's financial
6 ability to repay the mortgage;

7 (B) Any records or correspondence available which may
8 dispute that the mortgage loan is in default;

9 (C) Any records or correspondence available
10 evidencing a loan modification or amendment;

11 (D) Any records or correspondence available that
12 indicate the parties are currently engaged in
13 bona fide negotiations to modify the loan or
14 negotiate a settlement of the delinquency;

15 (E) Names and contact information for approved
16 housing counselors, approved budget and credit
17 counselors, or representatives of the mortgagee,
18 with whom the owner-occupant may have or is
19 currently working with to address the
20 delinquency; and

21 (F) Verification of counseling by an approved housing
22 counselor or approved budget and credit



1 counselor."

2 SECTION 45. Section 667-81, Hawaii Revised Statutes, is
3 amended by amending subsections (b), (c), and (d) to read as
4 follows:

5 "(b) If, despite the parties' participation in the dispute
6 resolution process and compliance with the requirements of this
7 part, the parties are not able to come to an agreement, the
8 neutral shall file a closing report with the department that the
9 parties met the program requirements. The mortgagee may [~~file~~
10 ~~or~~] record the report [~~at the bureau of conveyances or the land~~
11 ~~court, as appropriate~~]. Upon recording of the report pursuant
12 to this subsection, the foreclosure process shall resume along
13 the timeline as it existed on the date before the mortgagor
14 elected dispute resolution, and may proceed as otherwise
15 provided by law. The mortgagee shall notify the mortgagor of
16 the recording date and document number of this report and the
17 deadline date to cure default in an amended foreclosure notice.
18 Nothing in this subsection shall be construed to require the
19 neutral to wait the full sixty days allotted for dispute
20 resolution to determine that the parties were unable to reach an
21 agreement and file a report.



1 (c) If the parties have complied with the requirements of
2 this part and have reached an agreement, the agreement shall be
3 memorialized in [~~a settlement document~~] writing and signed by
4 the parties or their authorized representatives. [~~If the~~
5 ~~parties or their authorized representatives participate in the~~
6 ~~dispute resolution session in person, the settlement document~~
7 ~~shall be signed in the presence of the neutral. If any of the~~
8 ~~parties or their authorized representatives participate in the~~
9 ~~dispute resolution through telephone, videoconference, or other~~
10 ~~immediately available contemporaneous telecommunications medium,~~
11 ~~the settlement document shall be signed and returned to the~~
12 ~~neutral no later than ten days after the conclusion of the~~
13 ~~dispute resolution session.]~~ The parties shall be responsible
14 for drafting any agreement reached[, ~~and for filing or recording~~
15 ~~with the land court or the bureau of conveyances, as~~
16 ~~appropriate,~~] and enforcing the [~~settlement document.~~]
17 agreement. [~~The neutral shall file the settlement document with~~
18 ~~the neutral's closing report.]~~ The [~~settlement document~~]
19 agreement shall be a contract between the parties and shall be
20 enforceable in a private contract action in a court of
21 appropriate jurisdiction in the event of breach by either party.
22 If the [~~settlement document~~] agreement allows for foreclosure or



1 other transfer of the subject property, the stay of the
2 foreclosure under section 667-83 shall be released upon [~~filing~~
3 ~~or recording the settlement document with the land court or~~
4 ~~bureau of conveyances, as appropriate.~~] the recordation of the
5 neutral's closing report. Thereafter, the office of the
6 assistant registrar of the land court or bureau of conveyances
7 may record a notice of sale or other conveyance document, as
8 appropriate.

9 (d) If the parties to a dispute resolution process reach
10 an agreement which resolves the matters at issue in the dispute
11 resolution before the first day of the scheduled dispute
12 resolution session scheduled pursuant to this section, the
13 parties shall notify the neutral by that date. The neutral
14 shall thereafter issue a closing report that the parties have
15 reached an agreement prior to the commencement of a dispute
16 resolution session. If the agreement provides for foreclosure,
17 the parties shall memorialize the agreement in [a] writing,
18 which shall be signed by both parties [~~and provided to the~~
19 ~~neutral. Any agreement authorizing foreclosure shall be~~
20 ~~attached to the neutral's closing report~~]. The parties may
21 [~~file or~~] record the report [~~at the bureau of conveyances or the~~
22 ~~land court, as appropriate~~]. If the agreement authorizes



1 foreclosure, the stay of the foreclosure under section 667-83
2 shall be released upon [~~filing or recording with the land court~~
3 ~~or bureau of conveyances, as appropriate.~~] the recordation of
4 the report. Thereafter, the land court or bureau of conveyances
5 may record a notice of sale or other conveyance document, as
6 appropriate. No fees shall be refunded if the parties come to
7 an agreement prior to a dispute resolution session conducted
8 pursuant to this part."

9 SECTION 46. Section 667-82, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The neutral's closing report shall indicate if the
12 mortgagee or the owner-occupant failed to comply with
13 requirements of the mortgage foreclosure dispute resolution
14 program.

15 (1) In the case of the mortgagee, failure to comply with
16 the requirements of the program may consist of:

17 (A) Participation in dispute resolution without the
18 authority to negotiate a loan modification or
19 without access at all stages of the dispute
20 resolution process to a person who is so
21 authorized;

22 (B) Failure to provide the required information or



1 documents;

2 (C) Refusal to cooperate or participate in dispute
3 resolution; or

4 (D) Refusal or failure to pay program fees under
5 section 667-79 in a timely manner.

6 (2) In the case of the owner-occupant, failure to comply
7 with the requirements of the program may consist of:

8 (A) Failure to provide the required information or
9 documents; or

10 (B) Refusal to cooperate or participate in dispute
11 resolution~~[7]~~;

12 provided that failure by the mortgagee and the owner-
13 occupant to reach an agreement to resolve the dispute
14 shall not constitute failure by the mortgagee or the
15 owner-occupant to comply with the requirements of the
16 mortgage foreclosure dispute resolution program."

17 SECTION 47. Section 667-83, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The written notification of a case opening under
20 section 667-79 shall operate as a stay of the foreclosure
21 proceeding~~[7]~~ and may be ~~[filed or]~~ recorded~~[7 as appropriate,~~
22 ~~at the land court or bureau of conveyances.]~~ provided that:



(1) The written notification shall not act as a stay on a foreclosure proceeding by an association unless the association has been provided notice pursuant to sections 667-5.5, 667-21.5, or 667-79; and

(2) The written notification shall not act as a stay on a foreclosure proceeding for the purpose of the date by which the default must be cured pursuant to section 667-22(a)(6)."

SECTION 48. Section 667-86, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All persons who record an affidavit in the office of the assistant registrar of the land court, pursuant to section 501-118, or who record a conveyance document in the bureau of conveyances for an owner-occupied property subject to a nonjudicial power of sale foreclosure shall pay a fee of \$100, which shall be deposited into the mortgage foreclosure dispute resolution special fund on a quarterly basis."

PART IV

SECTION 49. Act 48, Session Laws of Hawaii 2011, is amended by amending section 45 to read as follows:

"SECTION 45. This Act shall take effect upon its approval;
provided that:



(1) The mortgage foreclosure dispute resolution program established by section 1 of this Act shall be operative no later than October 1, 2011; and

~~[(2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act;~~

~~+(3)]~~ (2) Section 10 shall take effect on July 1, 2012~~+~~

~~+(4) Section 5 shall be repealed on December 31, 2012;~~

~~+(5) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and~~

~~+(6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes]."~~



PART V

SECTION 50. Section 667-5, Hawaii Revised Statutes, is repealed.

~~["§667-5 Foreclosure under power of sale; notice; affidavit after sale; deficiency judgments. (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee's successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:~~

~~(1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property as follows:~~

~~(A) By serving, not less than twenty-one days before the date of sale, written notice of intent to foreclose on all persons entitled to notice under this part in the same manner as service of a civil complaint under chapter 634 and the Hawaii rules of civil procedure; provided that in the case of nonjudicial foreclosure of a lien by an~~



~~association against a mortgager who is not an
owner-occupant, the association shall mail the
notice by certified or registered mail, not less
than twenty-one days before the date of sale, to:~~

~~(i) The unit owner at the address shown in the
records of the association and, if
different, at the address of the unit being
foreclosed; and~~

~~(ii) All mortgage creditors whose names are known
or can be discovered by the association; and~~

~~(B) By publication of the notice once in each of
three successive weeks, constituting three
publications with the last publication to be not
less than fourteen days before the day of sale,
in a daily newspaper having the largest general
circulation in the specific county in which the
mortgaged property lies; provided that for
property located in a county with a population of
more than one hundred thousand but less than
three hundred thousand, the public notice shall
be published in the newspaper having the largest
circulation expressly in the eastern or western~~



1 ~~half of the county, corresponding to the location~~
2 ~~of the subject property;~~

3 ~~(2) Give notice of the mortgagor's right to elect to~~
4 ~~participate in the mortgage foreclosure dispute~~
5 ~~resolution program pursuant to section 667-75 or to~~
6 ~~convert the nonjudicial power of sale foreclosure to a~~
7 ~~judicial foreclosure pursuant to section 667-53; and~~

8 ~~(3) Give any notices and do all acts as authorized or~~
9 ~~required by the power contained in the mortgage.~~

10 ~~(b) Copies of the notice required under subsection (a)~~
11 ~~shall be:~~

12 ~~(1) Filed with the state director of taxation; and~~

13 ~~(2) Posted on the premises not less than twenty-one days~~
14 ~~before the day of sale.~~

15 ~~(c) Upon the request of any person entitled to notice~~
16 ~~pursuant to this section and sections 667-5.5 and 667-6, the~~
17 ~~attorney, the mortgagee, successor, or person represented by the~~
18 ~~attorney shall disclose to the requestor the following~~
19 ~~information:~~

20 ~~(1) The amount to cure the default, together with the~~
21 ~~estimated amount of the foreclosing mortgagee's~~
22 ~~attorneys' fees and costs, and all other fees and~~



~~costs estimated to be incurred by the foreclosing
mortgagee related to the default prior to the auction
within five business days of the request; and~~

~~(2) The sale price of the mortgaged property once
auctioned.~~

~~(d) Any sale, of which notice has been given pursuant to
subsections (a) and (b) may be postponed from time to time by
public announcement made by the mortgagee or by a person acting
on the mortgagee's behalf. Upon request made by any person who
is entitled to notice pursuant to section 667-5.5 or 667-6, or
this section, the mortgagee or person acting on the mortgagee's
behalf shall provide the date and time of a postponed auction,
or if the auction is canceled, information that the auction was
canceled. The mortgagee, within thirty days after selling the
property in pursuance of the power, shall file a copy of the
notice of sale and the mortgagee's affidavit, setting forth the
mortgagee's acts in the premises fully and particularly, in the
bureau of conveyances.~~

~~(e) The mortgagee or other person, excluding an
association, who completes the nonjudicial foreclosure of a
mortgage or other lien on residential property pursuant to this
part shall not be entitled to pursue or obtain a deficiency~~



1 ~~judgment against an owner-occupant of the residential property~~
2 ~~who, at the time the notice of intent to foreclose is served,~~
3 ~~does not have a fee simple or leasehold ownership interest in any~~
4 ~~other real property.~~

5 ~~Nothing in this section shall prohibit any other mortgagee~~
6 ~~or person who holds a lien on the residential property subject to~~
7 ~~the nonjudicial foreclosure, whose lien is subordinate to the~~
8 ~~mortgage being foreclosed and is extinguished by the nonjudicial~~
9 ~~foreclosure sale, from pursuing a monetary judgment against an~~
10 ~~owner-occupant.~~

11 ~~(f) Subject to the requirements of part V, the affidavit and~~
12 ~~copy of the notice shall be recorded and indexed by the~~
13 ~~registrar, in the manner provided in chapter 501 or 502, as the~~
14 ~~case may be.~~

15 ~~(g) This section is inapplicable if the mortgagee is~~
16 ~~foreclosing as to personal property only."]~~

17 SECTION 51. Section 667-5.7, Hawaii Revised Statutes, is
18 repealed.

19 ~~["[§667-5.7] Public sale. At any public sale pursuant to~~
20 ~~section 667-5, the successful bidder at the public sale, as the~~
21 ~~purchaser, shall not be required to make a downpayment to the~~



1 ~~foreclosing mortgagee of more than ten per cent of the highest~~
2 ~~successful bid price."]~~

3 SECTION 52. Section 667-6, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§667-6 Notice to mortgage creditors. Whenever a~~
6 ~~mortgage creditor having a mortgage lien on certain premises~~
7 ~~desires notice that another mortgage creditor having a mortgage~~
8 ~~lien on the same premises intends to foreclose the mortgage and~~
9 ~~sell the mortgaged property pursuant to a power of sale under~~
10 ~~section 667-5, the mortgage creditor may submit a written~~
11 ~~request to the mortgagee foreclosing or who may foreclose the~~
12 ~~mortgage by power of sale, to receive notice of the mortgagee's~~
13 ~~intention to foreclose the mortgage under power of sale. This~~
14 ~~request for notice may be submitted any time after the~~
15 ~~recordation or filing of the subject mortgage at the bureau of~~
16 ~~conveyances or the land court, but must be submitted prior to~~
17 ~~the completion of the publication of the mortgagee's notice of~~
18 ~~intention to foreclose the mortgage and of the sale of the~~
19 ~~mortgaged property. This request shall be signed by the~~
20 ~~mortgage creditor, or its authorized representative, desiring to~~
21 ~~receive notice, specifying the name and address of the person to~~
22 ~~whom the notice is to be mailed. The mortgagee receiving the~~



1 ~~request shall thereafter give notice to all mortgage creditors~~
2 ~~who have timely submitted their request. The notice shall be~~
3 ~~sent by mail or otherwise communicated to the mortgage~~
4 ~~creditors, not less than seven calendar days prior to the date~~
5 ~~of sale.~~

6 ~~No request for copy of any notice pursuant to this section~~
7 ~~nor any statement or allegation in any such request nor any~~
8 ~~record thereof shall affect the title to real property or be~~
9 ~~deemed notice to any person that any party requesting copy of~~
10 ~~the notice has or claims any right, title, or interest in, or~~
11 ~~lien or charge upon the property described in the mortgage~~
12 ~~referred to therein."]~~

13 SECTION 53. Section 667-7, Hawaii Revised Statutes, is
14 repealed.

15 [~~"§667-7 Notice, contents; affidavit. (a) The notice of~~
16 ~~intention of foreclosure shall contain:~~

17 ~~(1) A description of the mortgaged property; and~~

18 ~~(2) A statement of the time and place proposed for the~~
19 ~~sale thereof at any time after the expiration of four~~
20 ~~weeks from the date when first advertised.~~



1 ~~(b) The affidavit described under section 667-5 may~~
2 ~~lawfully be made by any person duly authorized to act for the~~
3 ~~mortgagee, and in such capacity conducting the foreclosure."]~~

4 SECTION 54. Section 667-8, Hawaii Revised Statutes, is
5 repealed.

6 ~~["§667-8 Affidavit as evidence, when. If it appears by~~
7 ~~the affidavit that the affiant has in all respects complied with~~
8 ~~the requirements of the power of sale and the statute, in~~
9 ~~relation to all things to be done by the affiant before selling~~
10 ~~the property, and has sold the same in the manner required by~~
11 ~~the power, the affidavit, or a duly certified copy of the record~~
12 ~~thereof, shall be admitted as evidence that the power of sale~~
13 ~~was duly executed."]~~

14 SECTION 55. Section 667-14, Hawaii Revised Statutes, is
15 repealed.

16 ~~["§667-14] Recordation of foreclosure notice. The~~
17 ~~foreclosing mortgagee may record a copy of the foreclosure~~
18 ~~notice with the assistant registrar of the land court or the~~
19 ~~bureau of conveyances, as appropriate, in a manner similar to~~
20 ~~recordation of notices of pendency of action under section 501-~~
21 ~~151 or section 634-51, as applicable. The recorded notice shall~~
22 ~~have the same effect as a notice of pendency of action. From~~



1 ~~and after the recordation of the notice, any person who becomes~~
2 ~~a purchaser or encumbrancer of the mortgaged property shall be~~
3 ~~deemed to have constructive notice of the power of sale~~
4 ~~foreclosure and shall be bound by the foreclosure."]~~

5 SECTION 56. Section 667-15, Hawaii Revised Statutes, is
6 repealed.

7 ~~["[§667-15] Location of public sale following power of~~
8 ~~sale foreclosure. The public sale of the mortgaged property~~
9 ~~shall be held only on grounds or at facilities under the~~
10 ~~administration of the State, as follows:~~

11 ~~(1) At the state capitol, for a public sale of mortgaged~~
12 ~~property located in the city and county of Honolulu;~~

13 ~~(2) At a state facility in Hilo, for a public sale of~~
14 ~~mortgaged property located in the eastern portion of~~
15 ~~the county of Hawaii;~~

16 ~~(3) At a state facility in Kailua Kona, for a public sale~~
17 ~~of mortgaged property located in the western portion~~
18 ~~of the county of Hawaii;~~

19 ~~(4) At a state facility in the county seat of Maui, for a~~
20 ~~public sale of mortgaged property located in the~~
21 ~~county of Maui; and~~

22 ~~(5) At a state facility in the county seat of Kauai, for a~~



1 ~~public sale of mortgaged property located in the~~
2 ~~county of Kauai;~~
3 ~~as designated by the department of accounting and general~~
4 ~~services; provided that no public sale shall be held on grounds~~
5 ~~or at facilities under the administration of the judiciary. The~~
6 ~~public sale shall be held during business hours on a business~~
7 ~~day."]~~

8 SECTION 57. Section 667-21.6, Hawaii Revised Statutes, is
9 repealed.

10 ~~["§667-21.6] Foreclosure of association lien; cure of~~
11 ~~default. If a unit owner notifies the association or its~~
12 ~~attorney by certified mail return receipt requested or by hand-~~
13 ~~delivery within five business days following a response to the~~
14 ~~unit owner's request for the amount to cure a default, together~~
15 ~~with an estimated amount of the foreclosing association's~~
16 ~~attorneys' fees and costs, and all other fees and costs related~~
17 ~~to the default estimated to be incurred by the foreclosing~~
18 ~~association, that it intends to cure the default, the~~
19 ~~association shall allow sixty calendar days to the unit owner to~~
20 ~~cure the default. The association shall not reject a reasonable~~
21 ~~payment plan for cure of the default; provided that a reasonable~~
22 ~~plan shall require the owner to pay at a minimum the current~~



1 ~~maintenance fee and some amount owed on the past due balance.~~
2 ~~From and after the date that the unit owner gives written notice~~
3 ~~to the association of its intent to cure the delinquency, any~~
4 ~~nonjudicial foreclosure of the lien shall be stayed pending the~~
5 ~~sixty day period or a longer period that is agreed upon by the~~
6 ~~parties."]~~

7 SECTION 58. Section 667-26, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§667-26 Public showing of mortgaged property. (a) If~~
10 ~~the default is not cured as stated in the notice of default and~~
11 ~~intention to foreclose, the foreclosing mortgagee shall conduct~~
12 ~~two open houses of the mortgaged property before the public~~
13 ~~sale; provided that the foreclosing mortgagee timely received~~
14 ~~the signed letter of agreement from the mortgagor as required by~~
15 ~~the notice of default and intention to foreclose. Only two open~~
16 ~~houses shall be required even if the date of the public sale is~~
17 ~~postponed.~~

18 ~~(b) Even if the signed letter of agreement is timely~~
19 ~~received, if there is no subsequent cooperation by the mortgagor~~
20 ~~to allow two open houses, the public sale may be held without~~
21 ~~any open houses of the mortgaged property. If the public notice~~
22 ~~of the public sale advertised the dates and times of the open~~



1 ~~houses, but there were no open houses because of the lack of~~
2 ~~cooperation by the mortgagor, the public sale may still be held~~
3 ~~as advertised, and the public notice of the public sale may not~~
4 ~~need to be republished."]~~

5 SECTION 59. Section 667-50, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§667-50] Definitions. For purposes of this chapter,~~
8 ~~"foreclosure notice" shall mean notice of intention to foreclose~~
9 ~~given pursuant to section 667-5 or notice of default and~~
10 ~~intention to foreclose prepared pursuant to section 667-22."]~~

11 SECTION 60. Section 667-61, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§667-61] Definitions. For the purposes of sections~~
14 ~~667-62 to 667-65, "time share interest" shall have the same~~
15 ~~meaning as in section 514E-1."]~~

16 SECTION 61. Section 667-72, Hawaii Revised Statutes, is
17 repealed.

18 ~~["§667-72] Definitions. As used in this part:~~

19 ~~"Approved budget and credit counselor" means a budget and~~
20 ~~credit counseling agency that has received approval from a~~
21 ~~United States trustee or bankruptcy administrator to provide~~



1 ~~instructional courses concerning personal financial management~~
2 ~~pursuant to Title 11 United States Code section 111.~~

3 ~~"Approved housing counselor" means a housing counseling~~
4 ~~agency that has received approval from the United States~~
5 ~~Department of Housing and Urban Development to provide housing~~
6 ~~counseling services pursuant to section 106(a)(2) of the Housing~~
7 ~~and Urban Development Act of 1968, Title 12 United States Code~~
8 ~~section 1701x.~~

9 ~~"Association" has the same meaning as in sections 514B-3~~
10 ~~and 421J-2.~~

11 ~~"Department" means the department of commerce and consumer~~
12 ~~affairs.~~

13 ~~"Director" means the director of commerce and consumer~~
14 ~~affairs.~~

15 ~~"Dispute resolution" means a facilitated negotiation~~
16 ~~between a mortgagor and mortgagee for the purpose of reaching an~~
17 ~~agreement for mortgage loan modification or other agreement in~~
18 ~~an attempt to avoid foreclosure or to mitigate damages if~~
19 ~~foreclosure is unavoidable.~~

20 ~~"Mortgagee" has the same meaning as the term is defined in~~
21 ~~section 667-21.~~



1 ~~"Mortgagor" has the same meaning as the term is defined in~~
2 ~~section 667-21.~~

3 ~~"Neutral" means a person who is a dispute resolution~~
4 ~~specialist assigned to facilitate the dispute resolution process~~
5 ~~required by this part.~~

6 ~~"Owner-occupant" means a person, at the time that a notice~~
7 ~~of default and intention to foreclose is served on the mortgagor~~
8 ~~under the power of sale:~~

- 9 ~~(1) Who owns an interest in the residential property, and~~
10 ~~the interest is encumbered by the mortgage being~~
11 ~~foreclosed; and~~
- 12 ~~(2) For whom the residential property is and has been the~~
13 ~~person's primary residence for a continuous period of~~
14 ~~not less than two hundred days immediately preceding~~
15 ~~the date on which the notice is served."]~~

16 **PART VI**

17 SECTION 62. Section 667-F, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§667-F Public notice of public sale; contents;**
20 **distribution; publication.** (a) The association shall prepare
21 the public notice of the public sale. The public notice shall
22 state:



- 1 (1) The date, time, and place of the public sale;
- 2 (2) The unpaid balance of the moneys owed to the
- 3 association;
- 4 (3) A description of the unit, including the address and
- 5 the tax map key number of the unit;
- 6 (4) The name of the unit owner;
- 7 (5) The name of the association;
- 8 (6) The name of any prior or junior creditors having a
- 9 recorded lien on the unit before the recordation of
- 10 the notice of default and intention to foreclose under
- 11 section 667-C;
- 12 (7) The name, the address in the State, and the telephone
- 13 number in the State of the person in the State
- 14 conducting the public sale; and
- 15 (8) The terms and conditions of the public sale.
- 16 (b) The public notice shall also contain wording
- 17 substantially similar to the following in all capital letters:
- 18 "THE DEFAULT UNDER THE ASSOCIATION
- 19 DOCUMENTS MAY BE CURED NO LATER THAN THREE
- 20 BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC
- 21 SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT
- 22 THAT WOULD BE OWED TO THE ASSOCIATION PLUS



1 THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS,
2 AND ALL OTHER FEES AND COSTS INCURRED BY THE
3 FORECLOSING ASSOCIATION RELATED TO THE
4 DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN
5 THE ASSOCIATION AND THE UNIT OWNER. THERE
6 IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT
7 OF REDEMPTION AFTER THAT TIME. IF THE
8 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL
9 BE CANCELED."

10 (c) If the default is not cured as required by the notice
11 of default and intention to foreclose, the association shall
12 have a copy of the public notice of the public sale of the unit:

- 13 (1) Mailed or delivered to the unit owners at their
14 respective last known addresses;
- 15 (2) Mailed or delivered to any prior or junior creditors
16 having a recorded lien on the unit before the
17 recordation of the notice of default and intention to
18 foreclose under section 667-C;
- 19 (3) Mailed or delivered to the state director of taxation;
- 20 (4) Mailed or delivered to the director of finance of the
21 county where the unit is located;



1 (5) Posted on the unit or on such other real property of
2 which the unit is a part; and

3 (6) Mailed or delivered to any other person entitled to
4 receive notice under section 667-5.5 or 667-21.5.

5 (d) The association shall have the public notice of the
6 public sale:

7 (1) Printed in not less than seven-point font and
8 published in the classified section of a newspaper
9 ~~[of] that is published at least weekly and having a~~
10 ~~general circulation in the [geographic area] county in~~
11 ~~which the unit is located. [A person may apply to the~~
12 ~~circuit court for an order confirming a newspaper to~~
13 ~~be of general circulation for purposes of this~~
14 ~~paragraph, which the court shall grant upon proof of~~
15 ~~compliance with this paragraph.]~~ The public notice
16 shall be published once each week for three
17 consecutive weeks, constituting three publications.
18 The public sale shall take place no sooner than
19 fourteen days after the date of the publication of the
20 third public notice advertisement; or

21 (2) Not less than twenty-eight days before the date of the
22 public sale, published on a state website at the



discretion of the agency that maintains the website;
provided that the public notice shall be published at
least once in the format described in paragraph (1) at
least fourteen days prior to the public sale.

~~[(e) As used in subsection (d):~~

~~"General circulation" refers to a newspaper that:~~

~~(1) Contains news of a general nature; and~~

~~(2) Is distributed within the geographic area where the
unit is located:~~

~~(A) At least weekly;~~

~~(B) For a minimum of one year unless interrupted by
strike, natural disaster, or act of war or
terror; and~~

~~(C) To a minimum of three per cent of the residents
of the geographic area, as determined by the last
decennial United States census and as verified by
an independent audit.~~

~~"Geographic area" means:~~

~~(1) The real property tax zone of the unit, as shown on
the real property tax maps kept by the real property
tax assessment division of the county of Hawaii, if
the unit is located in the county of Hawaii; or~~



1 ~~(2) The county in which the unit is located, if the unit~~
2 ~~is located in the city and county of Honolulu or the~~
3 ~~county of Maui or Kauai.] "~~

4 SECTION 63. Section 667-R, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§667-R Publication of notice of public sale.** (a) The
7 foreclosing mortgagee or association in a foreclosure by action
8 shall have the public notice of the public sale:

9 (1) Printed in not less than seven-point font and
10 published in the classified section of a newspaper
11 ~~[of] that is published at least weekly and having a~~
12 general circulation in the ~~[geographic area]~~ county in
13 which the mortgaged property or unit is located. ~~[A~~
14 ~~person may apply to the circuit court for an order~~
15 ~~confirming a newspaper to be of general circulation~~
16 ~~for purposes of this paragraph, which the court shall~~
17 ~~grant upon proof of compliance with this paragraph.]~~
18 The public notice shall be published once each week
19 for three consecutive weeks, constituting three
20 publications. The public sale shall take place no
21 sooner than fourteen days after the date of the



1 publication of the third public notice advertisement;

2 or

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

9 ~~[(b) As used in this section:~~

10 ~~"General circulation" refers to a newspaper that:~~

11 ~~{1} Contains news of a general nature; and~~

12 ~~{2} Is distributed within the geographic area where the
13 mortgaged property or unit is located:~~

14 ~~{A} At least weekly;~~

15 ~~{B} For a minimum of one year unless interrupted by
16 strike, natural disaster, or act of war or
17 terror; and~~

18 ~~{C} To a minimum of three per cent of the residents
19 of the geographic area, as determined by the last
20 decennial United States census and as verified by
21 an independent audit.~~

22 ~~"Geographic area" means:~~



- ~~(1) The real property tax zone of the mortgaged property or unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the mortgaged property or unit is located in the county of Hawaii; or~~
- ~~(2) The county in which the mortgaged property or unit is located, if the mortgaged property or unit is located in the city and county of Honolulu or the county of Maui or Kauai.] "~~

SECTION 64. Section 667-27, Hawaii Revised Statutes, is amended to read as follows:

"§667-27 Public notice of public sale; contents; distribution; publication. (a) The foreclosing mortgagee shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
- (2) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
- (3) A description of the mortgaged property, including the address and the tax map key number of the mortgaged property;
- (4) The name of the mortgagor and the borrower;



1 (5) The name of the foreclosing mortgagee;

2 (6) The name of any prior or junior creditors having a
3 recorded lien on the mortgaged property before the
4 recordation of the notice of default and intention to
5 foreclose under section 667-23;

6 (7) The name, the address in the State, and the telephone
7 number in the State of the person in the State
8 conducting the public sale; and

9 (8) The terms and conditions of the public sale.

10 (b) The public notice shall also contain wording
11 substantially similar to the following in all capital letters:

12 "THE DEFAULT UNDER THE MORTGAGE AGREEMENT MAY BE CURED
13 NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF
14 THE PUBLIC SALE OF THE MORTGAGED PROPERTY BY PAYING
15 THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE
16 FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE
17 MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE
18 FORECLOSING MORTGAGEE'S ATTORNEY'S FEES AND COSTS, AND
19 ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING
20 MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE
21 AGREED TO BETWEEN THE FORECLOSING MORTGAGEE AND THE
22 BORROWER. THERE IS NO RIGHT TO CURE THE DEFAULT OR



1 ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE
2 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE
3 CANCELED."

4 (c) If the default is not cured as required by the notice
5 of default and intention to foreclose, the foreclosing mortgagee
6 shall have a copy of the public notice of the public sale of the
7 mortgaged property:

8 (1) Mailed or delivered to the mortgagor and the borrower
9 at their respective last known addresses;

10 (2) Mailed or delivered to any prior or junior creditors
11 having a recorded lien on the mortgaged property
12 before the recordation of the notice of default and
13 intention to foreclose under section 667-23;

14 (3) Mailed or delivered to the state director of taxation;

15 (4) Mailed or delivered to the director of finance of the
16 county where the mortgaged property is located;

17 (5) Posted on the mortgaged property or on such other real
18 property of which the mortgaged property is a part;
19 and

20 (6) Mailed or delivered to any other person entitled to
21 receive notice under section 667-5.5 or 667-21.5.



1 (d) The foreclosing mortgagee shall have the public notice
2 of the public sale:

3 (1) Printed in not less than seven-point font and
4 published in the classified section of a newspaper
5 ~~[of]~~ that is published at least weekly and having a
6 general circulation in the [geographic area] county in
7 which the mortgaged property is located. ~~[A person~~
8 ~~may apply to the circuit court for an order confirming~~
9 ~~a newspaper to be of general circulation for purposes~~
10 ~~of this paragraph, which the court shall grant upon~~
11 ~~proof of compliance with this paragraph.]~~ The public
12 notice shall be published once each week for three
13 consecutive weeks, constituting three publications.
14 The public sale shall take place no sooner than
15 fourteen days after the date of the publication of the
16 third public notice advertisement; or

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

21 (A) If the mortgaged property is owned by an owner-
22 occupant, the public notice shall be published on



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

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

9 ~~[(e) As used in subsection (d):~~

10 ~~"General circulation" refers to a newspaper that:~~

11 ~~(1) Contains news of a general nature; and~~

12 ~~(2) Is distributed within the geographic area where the~~
13 ~~mortgaged property is located:~~

14 ~~(A) At least weekly;~~

15 ~~(B) For a minimum of one year unless interrupted by~~
16 ~~strike, natural disaster, or act of war or~~
17 ~~terror; and~~

18 ~~(C) To a minimum of three per cent of the residents~~
19 ~~of the geographic area, as determined by the last~~
20 ~~decennial United States census and as verified by~~
21 ~~an independent audit.~~

22 ~~"Geographic area" means:~~



~~(1) The real property tax zone of the mortgaged property,
as shown on the real property tax maps kept by the
real property tax assessment division of the county of
Hawaii, if the mortgaged property is located in the
county of Hawaii; or
(3) The county in which the mortgaged property is located,
if the mortgaged property is located in the city and
county of Honolulu or the county of Maui or Kauai.] "~~

PART VII

SECTION 65. In codifying the new sections added or amended by sections 2, 3, 62, and 63 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 66. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 67. This Act, except for section 667-0 in section 3 of this Act, does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun



1 before its effective date. Section 667-0 in section 3 of this
2 Act shall apply to:

3 (1) All pending judicial foreclosure actions filed by
4 mortgagees for residential property prior to the
5 effective date of this Act; and

6 (2) All judicial foreclosure actions filed by mortgagees
7 for residential property on or after the effective
8 date of this Act.

9 SECTION 68. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 69. This Act shall take effect upon its approval;
12 provided that:

13 (1) On July 1, 2017:

14 (A) Section 667-0 in section 3 of this Act shall be
15 repealed; and

16 (B) Section 667-P in section 3 of this Act shall take
17 effect;

18 (2) Section 4 of this Act, amending section 454M-5, Hawaii
19 Revised Statutes, shall take effect on July 1, 2012;

20 (3) The website maintained by the department of commerce
21 and consumer affairs for purposes of publishing the
22 electronic public notices of public sale pursuant to



1 section 667-27(d), as amended in section 20 of this
2 Act, shall be operative no later than August 30, 2012;
3 (4) Section 26 of this Act, amending section 667-41,
4 Hawaii Revised Statutes, shall take effect on
5 September 1, 2012; and
6 (5) Part VI of this Act, amending sections 667-F, 667-R,
7 and 667-27, Hawaii Revised Statutes, shall take effect
8 two years after the effective date of this Act.



Report Title:

Mortgage Foreclosures; Homeowner Association Liens and Assessments

Description:

Implements the 2011 recommendations of the mortgage foreclosure task force, and other best practices, to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments. Repeals the nonjudicial foreclosure process under part I of chapter 667, HRS. Makes permanent the mortgage foreclosure dispute resolution program and the process for converting nonjudicial foreclosures of residential property into judicial foreclosures. (CD1)

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

