

JAN 20 2012

A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

PART I

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

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



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

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

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

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

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

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

(1) The new mortgage foreclosure provisions of Act 48, 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.

PART II

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§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 with priority over all other liens, except:

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



1 (2) All sums unpaid on any mortgage of record that was
2 recorded prior to the recordation of a notice of a
3 lien by the association and any costs and expenses,
4 including attorneys' fees, provided in such mortgages;
5 and

6 (3) Liens of a condominium association that are secured by
7 the unit;

8 provided that a lien recorded by the association shall expire
9 two years from the date of recordation; and provided further
10 that no lien may be imposed by the association against any unit
11 for any assessments arising solely from fines, penalties, or
12 late fees.

13 The lien of the association may be foreclosed by action or
14 by nonjudicial or power of sale foreclosure procedures set forth
15 in chapter 667, by the managing agent or board, acting on behalf
16 of the association. In any such foreclosure, the unit owner
17 shall be required to pay a reasonable rental for the unit, if so
18 provided in the association documents or the law, and the
19 plaintiff in the foreclosure shall be entitled to the
20 appointment of a receiver to collect the rental owed by the unit
21 owner or any tenant of the unit. If the association is the
22 plaintiff, it may request that its managing agent be appointed



1 as receiver to collect the rent from the tenant. The managing
2 agent or board, acting on behalf 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 assessments shall be maintainable without foreclosing or waiving
7 the lien securing the unpaid assessments owed.

8 (b) Except as provided in subsection (e), 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 assessments
13 by the association chargeable to the unit that became due prior
14 to the acquisition of title to the unit by the acquirer. The
15 unpaid share of assessments shall be deemed to be assessments
16 collectible from all of the unit owners, including the acquirer
17 and the acquirer's successors and assigns. The mortgagee of
18 record or other purchaser of the unit shall be deemed to acquire
19 title and shall be required to pay the unit's share of
20 assessments beginning:

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



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



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

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

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

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

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

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

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



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

4 (d) A unit owner who pays an association the full amount
5 claimed by the association may file in small claims court or
6 require the association to mediate to resolve any disputes
7 concerning the amount or validity of the association's claim.
8 If the unit owner and the association are unable to resolve the
9 dispute through mediation, either party may file for arbitration
10 under chapter 658A; provided that a unit owner may only file for
11 arbitration if all amounts claimed by the association are paid
12 in full on or before the date of filing. If the unit owner
13 fails to keep all association assessments current during the
14 arbitration, the association may ask the arbitrator to
15 temporarily suspend the arbitration proceedings. If the unit
16 owner pays all association assessments within thirty days of the
17 date of suspension, the unit owner may ask the arbitrator to
18 recommence the arbitration proceedings. If the unit owner fails
19 to pay all association assessments by the end of the thirty-day
20 period, the association may ask the arbitrator to dismiss the
21 arbitration proceedings. The unit owner shall be entitled to a
22 refund of any amounts paid to the association that are not owed.



1 (e) In conjunction with or as an alternative to
2 foreclosure proceedings under subsection (a), where a unit is
3 owner-occupied, the association may authorize its managing agent
4 or board, after sixty days written notice to the unit owner and
5 to the unit's first mortgagee of the nonpayment of the unit's
6 share of the assessments, to terminate the delinquent unit's
7 access to the common elements and cease supplying a delinquent
8 unit with any and all services normally supplied or paid for by
9 the association. Any terminated services and privileges shall
10 be restored upon payment of all delinquent assessments, but need
11 not be restored until payment in full is received.

12 (f) Before the board or managing agent may take the
13 actions permitted under subsection (e), the board shall adopt a
14 written policy providing for such actions and have the policy
15 approved by a majority vote of the unit owners at an annual or
16 special meeting of the association or by the written consent of
17 a majority of the unit owners unless the association documents
18 already permit the process.

19 (g) Subject to this subsection and subsections (h) and
20 (i), the board may specially assess the amount of the unpaid
21 regular monthly common assessments for assessments against a



1 person who, in a judicial or nonjudicial power of sale
2 foreclosure, purchases a delinquent unit; provided that:

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

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



1 notice shall state the amount of the special
2 assessment, how that amount was calculated, and the
3 legal description of the unit.

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 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 667-33 is recorded;
16 and

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

19 "Regular monthly common assessments" does not include:

20 (1) Any other special assessment, except for a special
21 assessment imposed on all units as part of a budget
22 adopted pursuant to the association documents;



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

2 (3) Interest assessed by the association;

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

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

7 (j) The cost of a release of any lien filed pursuant to
8 this section shall be paid by the party requesting the release.

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



1 (b) Before taking any action under this section, the board
2 shall give to the delinquent unit owner written notice of its
3 intent to collect the rent owed. The notice shall:

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

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

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

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

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

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

19 (1) A commissioner or receiver has been appointed to take
20 charge of the premises pending a mortgage foreclosure;

21 (2) A mortgagee is in possession pending a mortgage
22 foreclosure; or



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

3 (f) In the event of any conflict between this section and
4 any provision of chapter 521, the conflict shall be resolved in
5 favor of this section; provided that if the tenant is entitled
6 to an offset of rent under chapter 521, the tenant may deduct
7 the offset from the amount due to the association, up to the
8 limits stated in chapter 521. Nothing herein precludes the unit
9 owner or tenant from seeking equitable relief from a court of
10 competent jurisdiction or seeking a judicial determination of
11 the amount owed.

12 (g) Before the board may take the actions permitted under
13 subsection (a), the board shall adopt a written policy providing
14 for the actions and have the policy approved by a majority vote
15 of the unit owners at an annual or special meeting of the
16 association or by the written consent of a quorum of the unit
17 owners."

18 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
19 amended as follows:

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

21 **"PART I. GENERAL PROVISIONS**

22 **§667-1 Definitions.** As used in this chapter:



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

6 "Approved housing counselor" means a Hawaii-based housing
7 counseling agency that has received approval from the United
8 States Department of Housing and Urban Development to provide
9 housing counseling services pursuant to section 106(a)(2) of the
10 Housing and Urban Development Act of 1968, title 12 United
11 States Code section 1701x, as the agency appears on the United
12 States Department of Housing and Urban Development website.

13 "Assessment" has the same meaning as "assessment" in
14 chapter 421J and "common expense" in chapter 514B.

15 "Association" has the same meaning as defined in sections
16 421J-2 and 514B-3.

17 "Association documents" has the same meaning as defined in
18 section 421J-2 and includes the "declaration" defined in section
19 514B-3 and the "bylaws" described in section 514B-108,
20 respectively.

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



1 "Borrower" means the borrower, maker, cosigner, or
2 guarantor under a mortgage agreement.

3 "Department" means the department of commerce and consumer
4 affairs.

5 "Director" means the director of commerce and consumer
6 affairs.

7 "Dispute resolution" means a facilitated negotiation under
8 part V between a mortgagor and mortgagee for the purpose of
9 reaching an agreement for mortgage loan modification or other
10 agreement in an attempt to avoid foreclosure or to mitigate
11 damages if foreclosure is unavoidable.

12 "Foreclosure notice" means notice of intention to foreclose
13 given pursuant to section 667-5 or notice of default and
14 intention to foreclose prepared pursuant to section 667-22.

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

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

15 "Nonjudicial foreclosure" means foreclosure under power of
16 sale.

17 "Open house" means a public showing of the mortgaged
18 property during a scheduled time period.

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



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

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

8 "Power of sale" or "power of sale foreclosure" means a
9 nonjudicial foreclosure when the mortgage contains, authorizes,
10 permits, or provides for a power of sale, a power of sale
11 foreclosure, a power of sale remedy, or a nonjudicial
12 foreclosure.

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

18 "Record" means to record or file a document in the office
19 of the assistant registrar of the land court under chapter 501
20 or to record a document in the bureau of conveyances under
21 chapter 502, or both, as applicable.



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

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

11 "Time share interest" has the same meaning as in section
12 514E-1.

13 "Unit" has the same meaning as in sections 421J-2 and 514B-
14 3.

15 "Unit owner" has the same meaning as "member" in section
16 421J-2 and "unit owner" in section 514B-3."

17 2. By adding a new part to be appropriately designated and
18 to read:

19 "PART . ASSOCIATION ALTERNATE POWER OF SALE
20 FORECLOSURE PROCESS

21 §667-A Alternate power of sale process. The process in
22 this part is an alternative power of sale process for



1 associations to the foreclosure by action and the foreclosure by
2 power of sale in part IA.

3 **§667-B Notice of default and intention to foreclose;**
4 **contents; distribution.** (a) When a unit owner has failed to
5 pay an assessment, and when the association intends to conduct a
6 power of sale foreclosure under this part, the association shall
7 prepare a written notice of default and intention to foreclose
8 addressed to the unit owner. The notice of default and
9 intention to foreclose shall state:

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

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

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

16 (4) The description of the default or, if the default is a
17 monetary default, an itemization of the delinquent
18 amount;

19 (5) The action required to cure the default, including the
20 delinquent amount and the estimated amount of the
21 association's attorney's fees and costs, and all other



1 fees and costs related to the default estimated to be
2 incurred by the association by the deadline date;

3 (6) The date by which the default must be cured, which
4 shall be within sixty days after service of the notice
5 of default and intention to foreclose;

6 (7) A statement that if the default is not cured by the
7 deadline date stated in the notice of default and
8 intention to foreclose, the entire unpaid balance of
9 the moneys owed to the association will become due,
10 that the association intends to conduct a power of
11 sale foreclosure to sell the unit at a public sale
12 without any court action and without going to court,
13 and that the mortgagee or any other person may acquire
14 the unit at the public sale;

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

20 (9) Notice of the right of the unit owner to submit a
21 payment plan within thirty days pursuant to subsection
22 (c).



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

5 "IF THE DEFAULT ON THE PAYMENT OF ASSESSMENTS
6 CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE
7 UNIT MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT
8 ACTION AND WITHOUT GOING TO COURT.

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

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

21 THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED
22 LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE



1 SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED
2 MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE
3 PREPAID AND RETURN RECEIPT REQUESTED.

4 IF THE SIGNED LETTER IS NOT RECEIVED BY THIS
5 OFFICE BY THE DEADLINE DATE, THE UNIT WILL THEN BE
6 SOLD WITHOUT ANY OPEN HOUSES BEING HELD.

7 EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO
8 ALLOW THE ASSOCIATION TO HOLD TWO OPEN HOUSES OF THE
9 UNIT, IF ALL OWNERS LATER DO NOT COOPERATE TO ALLOW
10 THE OPEN HOUSES, THE UNIT WILL BE SOLD WITHOUT ANY
11 OPEN HOUSES BEING HELD.

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

20 (c) A unit owner may submit a payment plan within thirty
21 days after service of a notice of default and intention to
22 foreclose on the unit owner. The unit owner shall submit the



1 payment plan to the association or its attorney by certified
2 mail return receipt requested or by hand delivery. A unit owner
3 may also cure the default within sixty days after service of a
4 notice of default and intention to foreclose on the unit owner
5 by paying the association the full amount of the default,
6 including the foreclosing association's attorneys' fees and
7 costs, and all other fees and costs related to the default that
8 are incurred or estimated to be incurred by the foreclosing
9 association. The association shall not reject a reasonable
10 payment plan; provided that a reasonable payment plan shall
11 require the unit owner to pay, at a minimum, the current
12 maintenance fee and some amount owed on the past due balance.
13 From and after the date that the unit owner gives written notice
14 to the association of its intent to cure the default or timely
15 submits a payment plan, any nonjudicial foreclosure of the lien
16 shall be stayed during the sixty-day period to cure the default
17 or during the term of the payment plan or a longer period that
18 is agreed upon by the parties. A unit owner's failure to
19 strictly perform any agreed-upon payment plan shall entitle the
20 association to pursue its remedies without further delay.
21 For purposes of this section, a reasonable payment plan
22 shall be a plan that provides for:



- 1 (1) Timely payment of all assessments that become due
2 after the date that the payment plan is proposed; and
3 (2) Additional monthly payments of an amount sufficient to
4 cure the default, within a reasonable period under the
5 circumstances as determined by the board of directors
6 in its discretion; provided that a period of up to
7 twelve months shall be deemed reasonable; and provided
8 further that the board of directors shall have the
9 discretion to agree to a payment plan in excess of
10 twelve months.

11 (d) The notice of default and intention to foreclose shall
12 also include contact information for approved housing counselors
13 and approved budget and credit counselors.

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

- 16 (1) The unit owner;
17 (2) Any prior or junior creditors who have a recorded lien
18 on the unit before the recordation of the notice of
19 default and intention to foreclose under section
20 667-C;
21 (3) The state director of taxation;



1 (4) The director of finance of the county where the unit
2 is located; and

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

5 **§667-C Recordation of notice of default and intention to**
6 **foreclose.** Before the deadline date in the notice of default
7 and intention to foreclose, the notice shall be recorded in a
8 recordable form in a manner similar to recordation of notices of
9 pendency of action under section 501-151 or section 634-51, or
10 both, as applicable. The recorded notice of default and
11 intention to foreclose shall have the same effect as a notice of
12 pendency of action. From and after the recordation of the
13 notice of default and intention to foreclose, any person who
14 becomes a purchaser or encumbrancer of the unit shall be deemed
15 to have constructive notice of the power of sale foreclosure and
16 shall be bound by the foreclosure.

17 **§667-D Cure of default.** (a) If the default is cured as
18 required by the notice of default and intention to foreclose, or
19 if the parties have agreed on a payment plan, the association
20 shall rescind the notice of default and intention to foreclose.
21 Within fourteen days of the date of the cure or an agreement on
22 a payment plan, the association shall so notify any person who



1 was served with the notice of default and intention to
2 foreclose. If the notice of default and intention to foreclose
3 was recorded, a release of the notice of default and intention
4 to foreclose shall be recorded.

5 (b) If the default is not cured as required by the notice
6 of default and intention to foreclose, or the parties have not
7 agreed on a payment plan, the association, without filing a
8 court action and without going to court, may foreclose the
9 association's lien under power of sale to sell the unit at a
10 public sale.

11 **§667-E Date of public sale of unit; place of sale. (a)**

12 The public sale of the unit shall take place on the later of the
13 following:

14 (1) At least sixty days after the public notice of the
15 public sale is distributed under section 667-G; or

16 (2) At least fourteen days after the date of the
17 publication of the third public notice advertisement
18 under section 667-G(d).

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



- 1 (1) At the state capitol, for a public sale of a unit
2 located in the city and county of Honolulu;
- 3 (2) At a state facility in Hilo, for a public sale of a
4 unit located in the districts of Hamakua, North Hilo,
5 South Hilo, or Puna;
- 6 (3) At a state facility in Kailua-Kona, for a public sale
7 of a unit located in the districts of North Kohala,
8 South Kohala, North Kona, South Kona, or Kau;
- 9 (4) At a state facility in the county seat of Maui, for a
10 public sale of a unit located in the county of Maui;
11 and
- 12 (5) At a state facility in the county seat of Kauai, for a
13 public sale of a unit located in the county of Kauai;
14 as designated by the department of accounting and general
15 services; provided further that no public sale shall be held on
16 grounds or at facilities under the administration of the
17 judiciary. The public sale shall be held during business hours
18 on a business day.
- 19 (c) The public sale of the unit shall be conducted by the
20 association on the date, at the time, and at the place described
21 in the public notice of the public sale.



1 **§667-F Public showing of unit.** (a) If the default is not
2 cured as stated in the notice of default and intention to
3 foreclose, the association shall conduct two open houses of the
4 unit before the public sale; provided that the association
5 timely received the signed letter of agreement from the unit
6 owner as required by the notice of default and intention to
7 foreclose. Only two open houses shall be required even if the
8 date of the public sale is postponed.

9 (b) Even if the signed letter of agreement is timely
10 received, if there is no subsequent cooperation by the unit
11 owner to allow two open houses, the public sale may be held
12 without any open houses of the unit. If the public notice of
13 the public sale advertised the dates and times of the open
14 houses, but there were no open houses because of the lack of
15 cooperation by the unit owner, the public sale may still be held
16 as advertised, and the public notice of the public sale may not
17 need to be republished.

18 **§667-G Public notice of public sale; contents;**
19 **distribution; publication.** (a) The association shall prepare
20 the public notice of the public sale. The public notice shall
21 state:

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



- 1 (2) The dates and times of the two open houses of the
2 unit, or if there will not be any open houses, the
3 public notice shall so state;
- 4 (3) The unpaid balance of the moneys owed to the
5 association;
- 6 (4) A description of the unit, including the address and
7 the tax map key number of the unit;
- 8 (5) The name of the unit owner;
- 9 (6) The name of the association;
- 10 (7) The name of any prior or junior creditors having a
11 recorded lien on the unit before the recordation of
12 the notice of default and intention to foreclose under
13 section 667-C;
- 14 (8) The name, the address in the State, and the telephone
15 number in the State of the person in the State
16 conducting the public sale; and
- 17 (9) The terms and conditions of the public sale.
- 18 (b) The public notice shall also contain wording
19 substantially similar to the following in all capital letters:

20 "THE DEFAULT UNDER THE ASSOCIATION

21 DOCUMENTS MAY BE CURED NO LATER THAN THREE

22 BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC



1 SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT
2 THAT WOULD BE OWED TO THE ASSOCIATION PLUS
3 THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS,
4 AND ALL OTHER FEES AND COSTS INCURRED BY THE
5 FORECLOSING ASSOCIATION RELATED TO THE
6 DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN
7 THE ASSOCIATION AND THE UNIT OWNER. THERE
8 IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT
9 OF REDEMPTION AFTER THAT TIME. IF THE
10 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL
11 BE CANCELED."

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

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

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

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



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

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

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

7 (d) The association shall have the public notice of the
8 public sale printed in not less than seven-point font and
9 published in the classified section of a daily newspaper of
10 general circulation in the real property tax zone in which the
11 unit is located, as shown on the applicable county real property
12 tax maps kept by each respective county's real property tax
13 assessment division, except for the county of Kalawao which
14 shall be considered its own geographic area for the purposes of
15 this subsection. The public notice shall be published once each
16 week for three consecutive weeks, constituting three
17 publications. The public sale shall take place no sooner than
18 fourteen days after the date of the publication of the third
19 public notice advertisement.

20 §667-H Postponement, cancellation of sale. (a) The
21 public sale may be either postponed or canceled by the



1 association. Notice of the postponement or the cancellation of
2 the public sale shall be:

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

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

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

18 (c) Upon the fourth postponement of every series of four
19 consecutive postponements, the association shall follow all of
20 the public notice of public sale requirements of section 667-G,
21 including the requirements of mailing and posting under section
22 667-G(c) and of publication under section 667-G(d).



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

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



1 association or any other person having a recorded lien on the
2 unit before the recordation of the notice of default and
3 intention to foreclose under section 667-C, the downpayment
4 requirement may be satisfied by offset and a credit bid up to
5 the amount of the lien debt.

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

19 **§667-K Conveyance of property on payment of purchase**
20 **price; distribution of sale proceeds.** (a) After the purchaser
21 completes the purchase by paying the full purchase price and the
22 costs for the purchase, the unit shall be conveyed to the



1 purchaser by a conveyance document. The conveyance document
2 shall be in a recordable form and shall be signed by the
3 association in the foreclosing mortgagee's name. The unit owner
4 shall not be required to sign the conveyance document.

5 (b) From the sale proceeds, after paying:

6 (1) All liens and encumbrances in the order of priority as
7 a matter of law;

8 (2) The association's attorney's fees and costs;

9 (3) The fees and costs; of the power of sale foreclosure;

10 and

11 (4) The moneys owed to the association,

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

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



1 prior lien creditor before any moneys are paid to the
2 association.

3 **§667-L Affidavit after public sale; contents.** (a) After
4 the public sale is held, the association shall sign an affidavit
5 under penalty of perjury:

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

16 (b) The recitals in the affidavit required under
17 subsection (a) may, but need not, be substantially in the
18 following form:

- 19 (1) I am duly authorized to represent or act on behalf of
20 _____ (name of association)
21 ("association") regarding the following power of sale
22 foreclosure. I am signing this affidavit in



1 accordance with the alternate power of sale
2 foreclosure law (Chapter 667, Part , Hawaii Revised
3 Statutes);

4 (2) The association is a "association" as defined in the
5 power of sale foreclosure law;

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

19 (4) Pursuant to the power of sale provision of law or
20 association documents, the power of sale foreclosure
21 was conducted as required by the power of sale
22 foreclosure law. The following is a summary of what



- 1 was done:
- 2 (A) A notice of default and intention to foreclose
- 3 was served on the mortgagor, the borrower, and
- 4 the following person: _____. The
- 5 notice of default and intention to foreclose was
- 6 served on the following date and in the following
- 7 manner: _____;
- 8 (B) The date of the notice of default and intention
- 9 to foreclose was _____ (date).
- 10 The deadline in the notice for curing the default
- 11 was _____ (date), which deadline
- 12 date was at least sixty days after the date of
- 13 the notice;
- 14 (C) The notice of default and intention to foreclose
- 15 was recorded before the deadline date in the
- 16 _____ (bureau of conveyances or
- 17 office of the assistant registrar of the land
- 18 court). The notice was recorded on
- 19 _____ (date) as document no.
- 20 _____. A copy of the recorded
- 21 notice is attached as Exhibit "1";
- 22 (D) The default was not cured by the deadline date in



1 the notice of default and intention to foreclose;

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

14 (F) The public notice of the public sale was sent to
15 the unit owner, to the state director of
16 taxation, to the director of finance of the
17 county where the unit is located, and to the
18 following: _____. The public
19 notice was sent on the following dates and in the
20 following manner: _____. Those
21 dates were after the deadline date in the notice
22 of default and intention to foreclose, and those



1 dates were at least sixty days before the date of
2 the public sale;

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

8 (H) Two public showings (open houses) of the unit
9 were held (or were not held because the unit
10 owner did not cooperate);

11 (I) A public sale of the unit was held on a business
12 day during business hours on: _____
13 (date), at _____ (time), at the
14 following location: _____. The
15 highest successful bidder was
16 _____ (name) with the highest
17 successful bid price of \$ _____;
18 and

19 (J) At the time the public sale was held, the default
20 was not cured; and

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



1 §667-M Recordation of affidavit, conveyance document;

2 effect. (a) The affidavit required under section 667-L and the
3 conveyance document shall be recorded no earlier than ten days
4 after the public sale is held but not later than forty-five days
5 after the public sale is held. The affidavit and the conveyance
6 document may be recorded separately and on different days.

7 After the recordation, the association shall mail or deliver a
8 recorded copy to those persons entitled to receive the public
9 notice of the public sale under section 667-G(c).

10 (b) When both the affidavit and the conveyance document
11 are recorded:

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

13 (2) All persons claiming by, through, or under the
14 mortgagor and all other persons having liens on the
15 unit junior to the lien of the association shall be
16 forever barred of and from any and all right, title,
17 interest, and claims at law or in equity in and to the
18 unit and every part of the unit, except as otherwise
19 provided by law;

20 (3) The lien of the association and all liens junior in
21 priority to the lien of a association shall be
22 automatically extinguished from the unit; and



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

(c) The mortgagor and any person claiming by, through, or under the mortgagor and who is remaining in possession of the unit after the recordation of the affidavit and the conveyance document shall be considered a tenant at sufferance subject to eviction or ejectment. The purchaser may bring an action in the nature of summary possession under chapter 666, ejectment, or trespass or may bring any other appropriate action in a court where the unit is located to obtain a writ of possession, a writ of assistance, or any other relief. In any such action, the court shall award the prevailing party its reasonable attorneys' fees and costs and all other reasonable fees and costs, all of which are to be paid for by the non-prevailing party.

§667-N Recordation; full satisfaction of debt by borrower.

The recordation of both the conveyance document and the affidavit shall not operate as full satisfaction of the debt owed by the unit owner to the association unless the sale proceeds from the unit or the amounts paid by a purchaser under the special assessment permitted by section 421J-A or 514B-146 are sufficient to satisfy the unit owner's debt to the association, including the association's legal fees and costs.



1 The debts of other lien creditors are unaffected except as
2 provided in this part.

3 **§667-0 Prohibited conduct.** It shall be a prohibited
4 practice for any association to engage in any of the following
5 practices:

- 6 (1) Holding a public sale on a date, at a time, or at a
7 place other than that described in the public notice
8 of the public sale or a properly noticed postponement;
9 (2) Specifying a fictitious place in the public notice of
10 the public sale;
11 (3) Conducting a postponed public sale on a date other
12 than the date described in the new public notice of
13 the public sale; or
14 (4) Completing or attempting to complete nonjudicial
15 foreclosure proceedings against a unit owner in
16 violation of section 667-B(c)."

17 **PART III**

18 **SECTION 4.** Section 454M-10, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§454M-10 Penalty.** Any person who violates any provision
21 of this chapter may be subject to an administrative fine of [at
22 ~~least \$1,000 and~~] not more than \$7,000 for each violation;



1 provided that \$1,000 of the aggregate fine amount shall be
2 deposited into the mortgage foreclosure dispute resolution
3 special fund established pursuant to section 667-86."

4 SECTION 5. Section 514A-90, Hawaii Revised Statutes, is
5 amended by amending subsections (a) and (b) to read as follows:

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

- 10 (1) Liens for taxes and assessments lawfully imposed by
11 governmental authority against the apartment; and
12 (2) All sums unpaid on any mortgage of record that was
13 recorded prior to the recordation of notice of a lien
14 by the association of apartment owners, and costs and
15 expenses including attorneys' fees provided in such
16 mortgages[-];

17 provided that a lien recorded by the association of apartment
18 owners shall expire two years from the date of recordation; and
19 provided further that no lien may be imposed by the association
20 against any apartment for any assessments arising solely from
21 finances, penalties, or late fees.



1 The lien of the association of apartment owners may be
2 foreclosed by action or by nonjudicial or power of sale
3 foreclosure procedures set forth in chapter 667, by the managing
4 agent or board of directors, acting on behalf of the association
5 of apartment owners~~[, in like manner as a mortgage of real~~
6 ~~property]~~. In any such foreclosure, the apartment owner shall be
7 required to pay a reasonable rental for the apartment, if so
8 provided in the bylaws~~[,]~~ or the law, and the plaintiff in the
9 foreclosure shall be entitled to the appointment of a receiver to
10 collect the rental owed~~[,]~~ by the apartment owner or any tenant of
11 the apartment. If the association of apartment owners is the
12 plaintiff, it may request that its managing agent be appointed as
13 receiver to collect the rent from the tenant. The managing agent
14 or board of directors, acting on behalf of the association of
15 apartment owners, unless prohibited by the declaration, may bid on
16 the apartment at foreclosure sale, and acquire and hold, lease,
17 mortgage, and convey the apartment. Action to recover a money
18 judgment for unpaid common expenses shall be maintainable without
19 foreclosing or waiving the lien securing the unpaid common
20 expenses owed.

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



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

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

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

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

20 (4) Upon the recording of the instrument of conveyance,
21 whichever occurs first; provided that the mortgagee of record or
22 other purchaser of the apartment shall not be deemed to acquire



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

14 SECTION 6. Section 514B-146, Hawaii Revised Statutes, is
15 amended by amending subsections (a) and (b) to read as follows:

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

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



1 (2) All sums unpaid on any mortgage of record that was
2 recorded prior to the recordation of a notice of a
3 lien by the association, and costs and expenses
4 including attorneys' fees provided in such
5 mortgages[-];
6 provided that a lien recorded by the association shall expire
7 two years from the date of recordation; and provided further
8 that no lien may be imposed by the association against any unit
9 for any assessments arising solely from fines, penalties, or
10 late fees.

11 The lien of the association may be foreclosed by action or
12 by nonjudicial or power of sale foreclosure procedures set forth
13 in chapter 667, by the managing agent or board, acting on behalf
14 of the association[, ~~in like manner as a mortgage of real~~
15 ~~property~~]. In any such foreclosure, the unit owner shall be
16 required to pay a reasonable rental for the unit, if so provided
17 in the bylaws[-] or the law, and the plaintiff in the
18 foreclosure shall be entitled to the appointment of a receiver
19 to collect the rental owed[-] by the unit owner or any tenant of
20 the unit. If the association is the plaintiff, it may request
21 that its managing agent be appointed as receiver to collect the
22 rent from the tenant. The managing agent or board, acting on



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

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

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



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



1 SECTION 7. Section 607-5, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) The fees prescribed by the schedule in this section
4 shall be paid to the clerk of the circuit court as costs of
5 court by the person instituting the action or proceeding, or
6 offering the paper for filing, or causing the document to be
7 issued or the services to be performed in the circuit court;
8 provided that nothing in the schedule shall apply to cases of
9 adults charged with commission of a crime, or to proceedings
10 under section 571-11(1), (2), or (9), to proceedings under
11 chapter 333F or 334, to small estates including decedents'
12 estates and protection of property of minors and persons under
13 disability when the amount payable is fixed by another statute[
14 ~~or to nonjudicial foreclosures converted to judicial proceedings~~
15 ~~pursuant to section 667-53; and~~]; provided further that the fees
16 prescribed by subsection (c)(32) shall be deposited by the clerk
17 of the circuit court into the judiciary computer system special
18 fund pursuant to section 601-3.7[~~-~~]; and provided further that
19 the fees prescribed by subsection (b)(1a) shall be deposited by
20 the clerk of the circuit court as provided in section 667-
21 53(a)(6).



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

3 **SCHEDULE**

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

10 (b) **PART I**

11 Action or proceeding, general:

12 (1) Civil action or special proceeding, unless
 13 another item in part I applies \$200

14 (1a) Petition for conversion of nonjudicial
 15 foreclosure to judicial foreclosure \$250

16 (2) Appeal to a circuit court \$100

17 (3) Transfer of action to circuit court from district
 18 court, in addition to district court fees \$125

19 Trusts:

20 (4) Proceeding for (A) appointment of trustee; (B)
 21 appointment of successor; (C) resignation of
 22 trustee; (D) instructions; (E) approval of



- 1 investment; (F) approval of sale, mortgage,
2 lease, or other disposition of property; (G)
3 approval of compromise of claim, for each such
4 matter \$100
- 5 (5) Proceeding for (A) removal of trustee; (B) order
6 requiring accounting; (C) invalidation of action
7 taken by trustee; (D) termination of trust, for
8 each such matter \$100
- 9 (6) Accounting, this fee to be paid for each account
10 filed and to include the settlement of the
11 account \$10
- 12 (7) Vesting order no charge under part I
- 13 (8) Allowance of fees of trustees, attorneys, or
14 other fees for services incurred in a
15 proceeding for which a fee has been paid
16 under this section no charge under part I
- 17 (8a) Registration of a trust, or release of
18 registration, under chapter 560 \$3
- 19 (9) Any other proceeding relating to a trust \$15
- 20 Conservatorship:
- 21 (10) Proceeding for (A) appointment; (B) appointment
22 of successor; (C) resignation; (D) instructions,



- 1 unless included in one of the foregoing
2 proceedings; (E), (F), (G) approval of any matter
3 listed in (E), (F), or (G) of item (4) in
4 relation to a trust, for each such matter \$100
- 5 (11) Proceeding of the nature listed in (A), (B), (C),
6 or (D) of item (5) in relation to a trust, for
7 each such matter \$15
- 8 (12) Accounting, same as provided by item (6) in
9 relation to a trust \$10
- 10 (13) Any other proceeding relating to a
11 conservatorship no charge under part I.
- 12 Guardianship:
- 13 (13a) Guardianship, including all matters of the nature
14 listed in items (4) to (9), whether in family or
15 circuit court \$100
- 16 Probate (decedents' estates). These fees include all matters of
17 the nature listed in items (4) to (9), without additional
18 charge:
- 19 (14) Probate, administration, domiciliary foreign
20 personal representative, or ancillary
21 administration, this fee to be paid once only for
22 each decedent's estate \$100



1 Family court cases:

- 2 (15) Matrimonial action (annulment, divorce,
3 separation, or separate maintenance) \$100
4 (16) Adoption \$100
5 (17) Guardianship, including all matters of the nature
6 listed in items (4) to (9) ... As provided in item 13(a)
7 (18) Termination of parental rights .. no charge under part I
8 (19) Any other family court proceeding, except motions or
9 other pleadings in matrimonial, adoption, and
10 guardianship actions, but including without limitation
11 custody proceedings even if in the form of an habeas
12 corpus proceeding \$15"

13 SECTION 8. Chapter 667, Hawaii Revised Statutes, is
14 amended by designating:

- 15 1. Part I as part IA; and
16 2. Section 667-1 as section 667-1.5.

17 SECTION 9. Section 667-5, Hawaii Revised Statutes, is
18 amended as follows:

- 19 1. By amending subsection (a) to read:

20 "(a) When a power of sale is contained in a mortgage, and
21 where the mortgagee, the mortgagee's successor in interest, or
22 any person authorized by the power to act in the premises[7]



1 desires to foreclose under power of sale upon breach of a
2 condition of the mortgage, the mortgagee, successor, or person
3 shall be represented by an attorney who is licensed to practice
4 law in the State and is physically located in the State. The
5 attorney shall:

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

9 (A) By serving, not less than twenty-one days before
10 the date of sale, written notice of intent to
11 foreclose on all persons entitled to notice under
12 this part [~~in the same manner as service of a~~
13 ~~civil complaint under chapter 634 and the Hawaii~~
14 ~~rules of civil procedure~~]; provided that in the
15 case of nonjudicial foreclosure of a lien by an
16 association against a mortgagor who is not an
17 owner-occupant, the association shall mail the
18 notice by certified or registered mail, not less
19 than twenty-one days before the date of sale, to:

20 (i) The unit owner at the address shown in the
21 records of the association and, if
22 different, at the address of the unit being



1 foreclosed; and

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

4 (B) By publication of the notice once in each of
5 three successive weeks, constituting three
6 publications with the last publication to be not
7 less than fourteen days before the day of sale,
8 in a daily newspaper [~~having the largest~~] of
9 general circulation in the [~~specific county in~~
10 ~~which the mortgaged property lies; provided that~~
11 ~~for property located in a county with a~~
12 ~~population of more than one hundred thousand but~~
13 ~~less than three hundred thousand, the public~~
14 ~~notice shall be published in the newspaper having~~
15 ~~the largest circulation expressly in the eastern~~
16 ~~or western half of the county, corresponding to~~
17 ~~the location of the subject property,~~] real
18 property tax zone in which the mortgaged property
19 is located, as shown on the applicable county
20 real property tax maps kept by each respective
21 county's real property tax assessment division,
22 except for the county of Kalawao which shall be



1 considered its own geographic area for the
2 purposes of this subparagraph;

- 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 2. By amending subsection (d) to read:

11 "(d) Any sale, of which notice has been given pursuant to
12 subsections (a) and (b), may be postponed from time to time by
13 public announcement made by the mortgagee or by a person acting
14 on the mortgagee's behalf. Upon request made by any person who
15 is entitled to notice pursuant to section 667-5.5 or 667-6[7] or
16 this section, the mortgagee or person acting on the mortgagee's
17 behalf shall provide the date and time of a postponed auction[7]
18 or, if the auction is canceled, information that the auction was
19 canceled. The mortgagee, not earlier than ten days after the
20 public sale but within thirty days after selling the property in
21 pursuance of the power, shall file a copy of the notice of sale
22 and the mortgagee's affidavit, setting forth the mortgagee's



1 acts in the premises fully and particularly, in the bureau of
2 conveyances."

3 SECTION 10. Section 667-5.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[f]§667-5.5[+] 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 registered or certified mail,
11 the board of directors of the planned community association, the
12 association of owners of the condominium project, or the
13 cooperative housing project in which the property to be
14 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 if the planned community
4 association, condominium association of owners, or cooperative
5 housing corporation is a party in a foreclosure action. This
6 section shall not affect civil proceedings against parties other
7 than the planned community association, association of owners,
8 or cooperative housing corporation."

9 SECTION 11. Section 667-6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§667-6 Notice to mortgage creditors.** (a) Whenever a
12 mortgage creditor [~~having~~] who has a mortgage lien on certain
13 premises desires notice that another mortgage creditor having a
14 mortgage lien on the same premises intends to foreclose the
15 mortgage and sell the mortgaged property pursuant to a power of
16 sale under section 667-5, the mortgage creditor may submit a
17 written request to the mortgagee who is foreclosing or who may
18 foreclose the mortgage by power of sale, asking to receive
19 notice of the mortgagee's intention to foreclose the mortgage
20 under power of sale. This request for notice may be submitted
21 any time after the recordation [~~or filing~~] of the subject
22 mortgage [~~at the bureau of conveyances or the land court, but~~



1 ~~must be~~; provided that the request is submitted prior to the
2 completion of the publication of the mortgagee's notice of
3 intention to foreclose the mortgage and of the sale of the
4 mortgaged property. This request shall be signed by the
5 mortgage creditor, or its authorized representative, desiring to
6 receive notice, specifying the name and address of the person to
7 whom the notice is to be mailed.

8 **(b)** The mortgagee receiving the request shall thereafter
9 give notice to all mortgage creditors who have timely submitted
10 their request. The notice shall be sent by mail or otherwise
11 communicated to the mortgage creditors, not less than seven
12 calendar days prior to the date of sale.

13 **(c)** No request for copy of any notice pursuant to this
14 section nor any statement or allegation in any such request nor
15 any record thereof shall affect the title to real property or be
16 deemed notice to any person that any party requesting copy of
17 the notice has or claims any right, title, or interest in, or
18 lien or charge upon the property described in the mortgage
19 referred to therein."

20 SECTION 12. Section 667-10, Hawaii Revised Statutes, is
21 amended to read as follows:

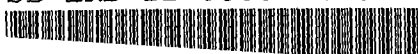
22 **"§667-10 Power unaffected by transfer; surplus after sale.**



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

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

13 "[~~§~~§667-14~~§~~] **Recordation of foreclosure notice.** The
14 foreclosing mortgagee may record a copy of the foreclosure
15 notice ~~[with the assistant registrar of the land court or the~~
16 ~~bureau of conveyances, as appropriate,]~~ in a manner similar to
17 recordation of notices of pendency of action under section 501-
18 151 or section 634-51, as applicable. The recorded notice shall
19 have the same effect as a notice of pendency of action. ~~[From~~
20 ~~and after]~~ Upon the recordation of the notice, any person who
21 thereafter becomes a purchaser or encumbrancer of the mortgaged
22 property shall be deemed to have constructive notice of the



1 power of sale foreclosure and shall be bound by the
2 foreclosure."

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

5 "[+]§667-15[+] Location of public sale following power of
6 sale foreclosure. The public sale of the mortgaged property
7 shall be held only on grounds or at facilities under the
8 administration of the State, as follows:

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

11 (2) At a state facility in Hilo, for a public sale of
12 mortgaged property located in the ~~[eastern portion of~~
13 ~~the county of Hawaii,]~~ districts of Hamakua, North
14 Hilo, South Hilo, or Puna;

15 (3) At a state facility in Kailua-Kona, for a public sale
16 of mortgaged property located in the ~~[western portion~~
17 ~~of the county of Hawaii,]~~ districts of North Kohala,
18 South Kohala, North Kona, South Kona, or Kau;

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

10 "**§667-21 Alternate power of sale process[~~;- definitions~~]**."

11 [~~(a)~~] The process in this part is an alternative power of sale
12 process to the foreclosure by action and the foreclosure by
13 power of sale in part [~~I.~~] IA.

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

15 "~~Approved budget and credit counselor~~" means a budget and
16 ~~credit counseling agency that has received approval from a~~
17 ~~United States trustee or bankruptcy administrator to provide~~
18 ~~instructional courses concerning personal financial management~~
19 ~~pursuant to Title 11 United States Code, section 111.~~

20 "~~Approved housing counselor~~" means a housing counseling
21 ~~agency that has received approval from the United States~~
22 ~~Department of Housing and Urban Development to provide housing~~



1 ~~counseling services pursuant to section 106(a)(2) of the Housing~~
2 ~~and Urban Development Act of 1968, Title 12 United States Code,~~
3 ~~section 1701x.~~

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

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

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

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

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

21 ~~(2) Any person that has an ownership interest in the~~
22 ~~promissory note on the mortgage agreement or a~~



1 ~~security interest represented by the mortgage for the~~
2 ~~subject property;~~

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

5 ~~(4) The agents, employees, trustees, and representatives~~
6 ~~of a lender, the foreclosing mortgagee, a mortgagee,~~
7 ~~and a mortgage servicer.~~

8 ~~"Mailed" means to be sent by regular mail, postage prepaid,~~
9 ~~and by certified, registered, or express mail, postage prepaid~~
10 ~~and return receipt requested.~~

11 ~~"Mortgage" means a mortgage, security agreement, or other~~
12 ~~document under which property is mortgaged, encumbered, pledged,~~
13 ~~or otherwise rendered subject to a lien for the purpose of~~
14 ~~securing the payment of money or the performance of an~~
15 ~~obligation.~~

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

18 ~~"Mortgaged property" means the property that is subject to~~
19 ~~the lien of the mortgage.~~

20 ~~"Mortgagee" means the current holder of record of the~~
21 ~~mortgagee's or the lender's interest under the mortgage, or the~~
22 ~~current mortgagee's or lender's duly authorized agent.~~



1 ~~"Mortgager" means the mortgager or borrower named in the~~
2 ~~mortgage and, unless the context otherwise indicates, includes~~
3 ~~the current owner of record of the mortgaged property whose~~
4 ~~interest is subject to the mortgage.~~

5 ~~"Nonjudicial foreclosure" means foreclosure under power of~~
6 ~~sale.~~

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

9 ~~"Owner-occupant" means a person, at the time that a notice~~
10 ~~of default and intention to foreclose is served on the mortgager~~
11 ~~under the power of sale.~~

12 ~~(1) Who owns an interest in the residential property, and~~
13 ~~the interest is encumbered by the mortgage being~~
14 ~~foreclosed; and~~

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

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



1 ~~a power of sale foreclosure, a power of sale remedy, or a~~
2 ~~nonjudicial foreclosure.~~

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

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

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

14 ~~"Served" means to have service of the notice of default and~~
15 ~~intention to foreclose made in accordance with the service of~~
16 ~~process or the service of summons under the Hawaii rules of~~
17 ~~civil procedure, and under sections 634-35 and 634-36.]"~~

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

20 "[~~§~~667-21.5[~~§~~] Foreclosure notice; planned communities;
21 condominiums; cooperative housing projects. Notwithstanding any
22 law or agreement to the contrary, any person who forecloses on a



1 property under this part within a planned community, a
2 condominium apartment or unit, or an apartment in a cooperative
3 housing project shall notify, by way of registered or certified
4 mail, the board of directors of the planned community
5 association, the association of owners of the condominium
6 project, or the cooperative housing project in which the
7 property to be foreclosed is located, of the following:

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

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

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



1 parties other than the planned community association,
2 association of owners, or cooperative housing corporation."

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

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

6 "(a) When the mortgagor or the borrower has breached the
7 mortgage agreement, and when the foreclosing mortgagee intends
8 to conduct a power of sale foreclosure under this part, the
9 foreclosing mortgagee shall prepare a written notice of default
10 and intention to foreclose addressed to the mortgagor, the
11 borrower, and any guarantor. The notice of default and
12 intention to foreclose shall state:

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

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

16 (3) ~~[The]~~ With respect to the mortgaged property, the
17 address or a description of ~~[the]~~ its location ~~[of the~~
18 ~~mortgaged property]~~, ~~[the]~~ tax map key number, and
19 ~~[the]~~ certificate of title or transfer certificate of
20 title number if ~~[within the jurisdiction of]~~
21 registered in the land court ~~[, of the mortgaged~~
22 ~~property]~~;



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 foreclosing mortgagee's attorney's fees and costs, and
7 all other fees and costs related to the default
8 estimated to be incurred by the foreclosing mortgagee
9 by the deadline date;

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

13 (7) A statement that if the default is not cured by the
14 deadline date stated in the notice of default and
15 intention to foreclose, the entire unpaid balance of
16 the moneys owed to the mortgagee under the mortgage
17 agreement will become due, that the mortgagee intends
18 to conduct a power of sale foreclosure to sell the
19 mortgaged property at a public sale without any court
20 action and without going to court, and that the
21 mortgagee or any other person may acquire the
22 mortgaged property at the public sale;



1 (8) The name, address, electronic address, and telephone
2 number of the attorney who is representing the
3 foreclosing mortgagee; provided that the attorney
4 shall be licensed to practice law in the State and
5 physically located in the State; and

6 (9) Notice of the right of the owner-occupant to elect to
7 participate in any other process as established by
8 law."

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

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

13 (e) The foreclosing mortgagee shall have the notice of
14 default and intention to foreclose served on:

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

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



1 (3) The state director of taxation;

2 (4) The director of finance of the county where the
3 mortgaged property is located;

4 (5) The department of commerce and consumer affairs, by
5 filing the notice with the department when required;
6 and

7 (6) Any other person entitled to receive notice under this
8 part."

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

11 **"§667-24 Cure of default.** (a) If the default is cured as
12 required by the notice of default and intention to foreclose, or
13 if the parties have reached [~~a settlement document,~~] an
14 agreement to resolve the nonjudicial foreclosure, the
15 foreclosing mortgagee shall rescind the notice of default and
16 intention to foreclose. Within fourteen days of the date of the
17 cure or [~~a settlement document reached by the parties,~~] an
18 agreement to resolve the nonjudicial foreclosure, the
19 foreclosing mortgagee shall so notify any person who was served
20 with the notice of default and intention to foreclose. If the
21 notice of default and intention to foreclose was recorded, a
22 release of the notice of default and intention to foreclose



1 shall be recorded.

2 (b) If the default is not cured as required by the notice
3 of default and intention to foreclose, the parties have not
4 reached [~~a settlement document pursuant to part V~~] an agreement
5 to resolve the nonjudicial foreclosure and no report of
6 noncompliance has been issued against the mortgagee under
7 section 667-82, and the mortgagor has not elected to convert the
8 foreclosure to a judicial action, the foreclosing mortgagee,
9 without filing a court action and without going to court, may
10 foreclose the mortgage under power of sale to sell the mortgaged
11 property at a public sale."

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

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

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

20 (2) At a state facility in Hilo, for a public sale of
21 mortgaged property located in the [~~eastern portion of~~
22 ~~the county of Hawaii;~~] districts of Hamakua, North



1 Hilo, South Hilo, or Puna;

2 (3) At a state facility in Kailua-Kona, for a public sale
3 of mortgaged property located in the [~~western portion~~
4 ~~of the county of Hawaii;~~] districts of North Kohala,
5 South Kohala, North Kona, South Kona, or Kau;

6 (4) At a state facility in the county seat of Maui, for a
7 public sale of mortgaged property located in the
8 county of Maui; and

9 (5) At a state facility in the county seat of Kauai, for a
10 public sale of mortgaged property located in the
11 county of Kauai;

12 as designated by the department of accounting and general
13 services; provided further that no public sale shall be held on
14 grounds or at facilities under the administration of the
15 judiciary. The public sale shall be held during business hours
16 on a business day."

17 SECTION 20. Section 667-27, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(a) The foreclosing mortgagee shall prepare the public
21 notice of the public sale. The public notice shall state:

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



- 1 (2) The dates and times of the two open houses of the
2 mortgaged property, or if there will not be any open
3 houses, the public notice shall so state;
- 4 (3) The unpaid balance of the moneys owed to the mortgagee
5 under the mortgage agreement;
- 6 (4) A description of the mortgaged property, including the
7 address and the tax map key number of the mortgaged
8 property;
- 9 (5) The name of the mortgagor and the borrower;
- 10 (6) The name of the foreclosing mortgagee;
- 11 (7) The name of any prior or junior creditors having a
12 recorded lien on the mortgaged property before the
13 recordation of the notice of default and intention to
14 foreclose under section 667-23;
- 15 (8) The name, the address in the State, and the telephone
16 number in the State of the person in the State
17 conducting the public sale; and
- 18 (9) The terms and conditions of the public sale[~~and~~
19 ~~(10) An estimate of the opening bid~~]."

20 2. By amending subsection (d) to read:

21 "(d) The foreclosing mortgagee shall have the public
22 notice of the public sale printed in not less than seven-point



1 font and published in the classified section of a daily
2 newspaper ~~[having the largest]~~ of general circulation
3 ~~[specifically] in the [county where the mortgaged property is~~
4 ~~located; provided that for property located in a county with a~~
5 ~~population of more than one hundred thousand but less than three~~
6 ~~hundred thousand, the public notice shall be published in the~~
7 ~~newspaper having the largest general circulation specifically in~~
8 ~~the western or eastern half of the county, as the case may be,~~
9 ~~in which the property is located.]~~ real property tax zone in
10 which the mortgaged property is located, as shown on the
11 applicable county real property tax maps kept by each respective
12 county's real property tax assessment division, except for the
13 county of Kalawao which shall be considered its own geographic
14 area for the purposes of this subsection. The public notice
15 shall be published once each week for three consecutive weeks,
16 constituting three publications. The public sale shall take
17 place no sooner than fourteen days after the date of the
18 publication of the third public notice advertisement."

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



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

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

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

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

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 mortgagee) ("foreclosing
16 mortgagee") 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 II, Hawaii Revised
20 Statutes);

21 (2) The foreclosing mortgagee is a [~~"foreclosing~~
22 ~~mortgagee"~~] mortgagee as defined in [~~the power of sale~~



1 ~~foreclosure law;~~ section 667-1, Hawaii Revised

2 Statutes, conducting a power of sale foreclosure;

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

4 _____ (name of mortgagor)

5 ("mortgagor"), dated _____, and

6 recorded in the _____ (bureau of

7 conveyances or office of the assistant registrar of

8 the land court) as _____ (recordation

9 information). The mortgaged property is located at:

10 _____ (address or description of

11 location) and is identified by tax map key number:

12 _____. The legal description of the

13 mortgaged property, which shall include the

14 certificate of title or transfer certificate of title

15 number if registered in the land court, is attached as

16 Exhibit "A". The name of the borrower, if different

17 from the mortgagor, is _____

18 ("borrower");

19 (4) Pursuant to the power of sale provision of the

20 mortgage, the power of sale foreclosure was conducted

21 as required by the power of sale foreclosure law. The

22 following is a summary of what was done:



1 (A) A notice of default and intention to foreclose
2 was served on the mortgagor, the borrower, and
3 the following person: _____. The
4 notice of default and intention to foreclose was
5 served on the following date and in the following
6 manner: _____;

7 (B) The date of the notice of default and intention
8 to foreclose was _____ (date).
9 The deadline in the notice for curing the default
10 was _____ (date), which deadline
11 date was at least sixty days after the date of
12 the notice;

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

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



1 (E) A public notice of the public sale was initially
2 published in the classified section of the
3 _____, [~~a daily newspaper of~~
4 ~~general circulation in the county where the~~
5 ~~mortgaged property is located,~~] in accordance
6 with section 667-27(d), Hawaii Revised Statutes,
7 once each week for three consecutive weeks on the
8 following dates: _____. A copy
9 of the affidavit of publication for the last
10 public notice of the public sale is attached as
11 Exhibit "2". The date of the public sale was
12 _____ (date). The last
13 publication was not less than fourteen days
14 before the date of the public sale;

15 (F) The public notice of the public sale was sent to
16 the mortgagor, to the borrower, to the state
17 director of taxation, to the director of finance
18 of the county where the mortgaged property is
19 located, and to the following:
20 _____. The public notice was sent
21 on the following dates and in the following
22 manner: _____. Those dates were



1 after the deadline date in the notice of default
2 and intention to foreclose, and those dates were
3 at least sixty days before the date of the public
4 sale;

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

11 (H) Two public showings (open houses) of the
12 mortgaged property were held (or were not held
13 because the mortgagor did not cooperate);

14 (I) A public sale of the mortgaged property was held
15 on a business day during business hours on:

16 _____ (date), at

17 _____ (time), at the following

18 location: _____. The highest

19 successful bidder was _____ (name)

20 with the highest successful bid price of

21 \$ _____; and

22 (J) At the time the public sale was held, the default



1 was not cured and there was no circuit court
2 foreclosure action pending in the circuit where
3 the mortgaged property is located; and

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

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

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

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

18 "**§667-37 Judicial action of foreclosure before public**
19 **sale.** This part shall not prohibit [~~the borrower,~~] the
20 foreclosing mortgagee, or any other creditor having a recorded
21 lien on the mortgaged property before the recordation of the
22 notice of default under section 667-23, from filing an action



1 for the judicial foreclosure of the mortgaged property in the
2 circuit court of the circuit where the mortgaged property is
3 located[-]; provided that the action is filed before the public
4 sale is held. The power of sale foreclosure process shall be
5 stayed during the pendency of the circuit court foreclosure
6 action."

7 SECTION 25. Section 667-41, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§667-41 Public information notice requirement.

10 [~~Beginning on September 1, 2011, all~~] (a) All financial
11 institutions, mortgagees, lenders, business entities and
12 organizations without limitation, and persons, who intend to use
13 the power of sale foreclosure under this part, under the
14 conditions required by this part, shall [~~also develop~~
15 ~~informational materials to educate and inform borrowers and~~
16 ~~mortgagors. These materials shall be made available to the~~
17 ~~public and provided to the mortgagors of all mortgage agreements~~
18 ~~entered into, including the borrowers at the time of application~~
19 ~~for a mortgage or loan, or other contract containing a power of~~
20 ~~sale foreclosure provision. These materials, among other~~
21 ~~things, shall inform the borrower that the financial institution~~
22 ~~and other business entities and persons who are authorized under~~



1 ~~this part to exercise the power of sale foreclosure, in the~~
2 ~~event of the borrower's default, have the option of pursuing~~
3 ~~either a judicial or nonjudicial foreclosure as provided by law.~~
4 ~~These informational materials shall fully and completely explain~~
5 ~~these remedies in simple and understandable terms.]~~ provide the
6 public information notice described in subsection (b) to the
7 public, upon request, and to any applicant submitting a loan
8 application where residential property is required to be used to
9 secure the loan. The notice shall be provided to all applicants
10 and all owners of the residential property (if different from
11 the applicants) within three business days after the submission
12 of a written loan application, or within three business days
13 after the time residential property is required to be used to
14 secure a loan, whether or not there is a written loan
15 application. The purpose of the public information notice is to
16 inform the public, applicants, and others that the financial
17 institutions, mortgagees, lenders, organizations, and other
18 business entities and persons who are authorized under this part
19 to enforce the foreclosure rights in a mortgage, in the event of
20 the borrower's default, have the option of pursuing either a
21 judicial or nonjudicial foreclosure in the manner provided by
22 law.



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

5 PUBLIC INFORMATION NOTICE PURSUANT TO
6 HAWAII REVISED STATUTES SECTION 667-41

7 WHAT IS FORECLOSURE?

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

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

19 The entity or person who holds your mortgage
20 ("Mortgagee") may send you a notice informing you that
21 the Mortgagee is starting foreclosure proceedings.

22 You should not wait for that to happen; take steps to



1 prevent a foreclosure as soon as you are having
2 trouble paying your mortgage. You should contact your
3 lender or your lender's loan servicer, or you may
4 contact a budget and credit counselor or housing
5 counselor, to discuss your situation.

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

14 STEP TWO: PROCEEDING TO FORECLOSURE. If you do
15 not pay the required amount past due by the deadline
16 in the notice of default, the Mortgagee may elect to
17 proceed to collect the balance due on your loan
18 through foreclosure. In Hawaii, there are two types
19 of foreclosures: judicial and nonjudicial.

20 In a JUDICIAL FORECLOSURE, the Mortgagee files a
21 lawsuit against you in order to obtain a court
22 judgment that you owe the balance due under your loan



1 and to obtain an order to sell the property. The
2 initial legal document you will receive in the lawsuit
3 is called the complaint. You should consult an
4 attorney of your choice who can advise you as to the
5 steps needed to protect your rights. Judicial
6 foreclosure involves the sale of the mortgaged
7 property under the supervision of the court. You will
8 receive notice of the foreclosure case hearings and
9 the sale date and the judicial decision is announced
10 after a hearing in court. The sale of the property
11 must be approved by the court before it can be
12 completed.

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



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

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

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

19 STEP THREE: PUBLIC SALE. The sale of a
20 foreclosed home is usually made through a public
21 auction, where the highest bidder who can make a cash
22 deposit of up to 10% of the bid can buy the property.



1 In a judicial foreclosure, the court appoints a third
2 party commissioner to advertise and conduct the sale.
3 In a nonjudicial foreclosure, the Mortgagee advertises
4 and conducts the sale. In both types of sales, the
5 Mortgagee has the right to buy the property by
6 submitting a credit bid based upon the balance owed on
7 the mortgage, so long as its bid is higher than any
8 other bids. If the Mortgagee buys the property, the
9 Mortgagee has the right to re-sell it in a private
10 sale at a later date.

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

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



1 In a NONJUDICIAL FORECLOSURE, the Mortgagee
2 distributes the proceeds from the sale. If the
3 mortgaged property does not sell for enough to pay off
4 the balance due under your loan, the Mortgagee may
5 have the right to file a lawsuit against you to
6 collect the deficiency. In many cases, after a
7 nonjudicial foreclosure, a Mortgagee cannot or will
8 not choose to file a lawsuit for a deficiency.

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

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

17 SECTION 26. Section 667-53, Hawaii Revised Statutes, is
18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) An owner-occupant of a residential property that is
20 subject to nonjudicial foreclosure under part [F] IA or II may
21 convert the action to a judicial foreclosure provided that:

22 (1) A petition conforming to section 667-54 shall be filed



1 with the circuit court in the circuit where the
2 residential property is located, stating that the
3 owner-occupant of the property elects to convert the
4 nonjudicial foreclosure to a judicial foreclosure
5 proceeding no later than thirty days after the
6 foreclosure notice is served on the owner-occupant as
7 required by section 667-5 or 667-22;

8 (2) Within forty-five days of the filing of the petition,
9 all owner-occupants and mortgagors of an interest in
10 the residential property whose interests are pledged
11 or otherwise encumbered by the mortgage that is being
12 foreclosed and all persons who have signed the
13 promissory note or other instrument evidencing the
14 debt secured by the mortgage that is being foreclosed,
15 including without limitation co-obligors and
16 guarantors, shall file a statement in the circuit
17 court action that they agree to submit themselves to
18 the judicial process and the jurisdiction of the
19 circuit court; provided further that if this condition
20 is not satisfied, the circuit court action may be
21 dismissed with prejudice as to the right of any owner-
22 occupant to convert the action to a judicial



1 proceeding, and the mortgagee may proceed
2 nonjudicially;

3 (3) Filing a petition pursuant to paragraph (1) shall
4 automatically stay the nonjudicial foreclosure action
5 unless and until the judicial proceeding has been
6 dismissed;

7 (4) The person filing the petition pursuant to paragraph
8 (1) shall have an affirmative duty to promptly notify
9 the Hawaii attorney who is handling the nonjudicial
10 foreclosure about the filing of the complaint for
11 conversion;

12 (5) All parties joined in the converted judicial
13 proceeding may assert therein any claims and defenses
14 that they could have asserted had the action
15 originally been commenced as a judicial foreclosure
16 action; and

17 (6) ~~[Notwithstanding chapter 607, the]~~ The fee for filing
18 the petition shall be ~~[not more than \$525, of which]~~
19 \$250, which shall be deposited into the mortgage
20 foreclosure dispute resolution special fund
21 established under section 667-86~~[, provided that if~~
22 ~~the mortgage foreclosure dispute resolution program~~



1 ~~under part V has not yet been implemented, the filing~~
2 ~~fee shall be not more than \$300].~~

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

6 SECTION 27. Section 667-54, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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

- 10 (1) A caption setting forth the name of the court, the
11 title of the action, and the file number; provided
12 that the title of the action shall include the names
13 of the filing party as petitioner and the foreclosing
14 party as the respondent;
- 15 (2) The name, mailing address, and telephone number of the
16 filing party;
- 17 (3) The address or tax map key number, and the certificate
18 of title or transfer certificate of title number if
19 ~~[within the land court's jurisdiction,]~~ registered in
20 the land court, of the property subject to the
21 foreclosure action;
- 22 (4) A statement identifying all other owner-occupants and



1 mortgagors of the property whose interests are pledged
2 or otherwise encumbered by the mortgage that is being
3 foreclosed and all persons who have signed the
4 promissory note or other instrument evidencing the
5 debt secured by the mortgage that is being foreclosed,
6 including without limitation co-obligors and
7 guarantors;

8 (5) A certification under penalty of perjury that the
9 filing party is an owner-occupant of the subject
10 property and seeks to convert the nonjudicial
11 foreclosure to a judicial proceeding;

12 (6) A statement certifying that the filing party served a
13 copy of the petition on the attorney identified in the
14 foreclosure notice under section 667-5 or 667-22
15 either by personal delivery at, or by postage prepaid
16 United States mail to, the address of the attorney as
17 set forth in the foreclosure notice under section 667-
18 5 or 667-22; and

19 (7) A copy of the foreclosure notice that was served on
20 the filing party pursuant to section 667-5 or 667-22
21 and for which the filing party is seeking to convert
22 to a judicial proceeding."



1 SECTION 28. Section 667-55, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The foreclosure notice that is served as required
4 under section 667-5 or 667-22 shall include, in addition to the
5 contents required under section 667-5 or 667-22, a statement
6 printed in not less than fourteen-point font as follows:

7 "IF THE PROPERTY BEING FORECLOSED IS
8 IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN
9 OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN
10 CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A
11 PERSON WHO, AT THE TIME THIS NOTICE IS SERVED,
12 OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT
13 IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND
14 THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY
15 RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO
16 HUNDRED DAYS) HAS THE RIGHT TO CONVERT A
17 NONJUDICIAL FORECLOSURE PROCEEDING TO A JUDICIAL
18 FORECLOSURE WHERE CLAIMS AND DEFENSES MAY BE
19 CONSIDERED BY A COURT OF LAW. TO EXERCISE THIS
20 RIGHT, THE OWNER-OCCUPANT SHALL COMPLETE AND FILE
21 THE ATTACHED FORM WITH THE CIRCUIT COURT IN THE
22 CIRCUIT WHERE THE PROPERTY IS LOCATED WITHIN



1 THIRTY DAYS AFTER SERVICE OF THIS NOTICE.

2 IN ADDITION, ALL OWNER-OCCUPANTS AND
3 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE
4 INTERESTS HAVE BEEN PLEDGED OR OTHERWISE
5 ENCUMBERED BY THE MORTGAGE THAT IS BEING
6 FORECLOSED AND ALL PERSONS WHO HAVE SIGNED THE
7 PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING
8 THE DEBT SECURED BY THE MORTGAGE THAT IS BEING
9 FORECLOSED, INCLUDING, WITHOUT LIMITATION, CO-
10 OBLIGORS AND GUARANTORS, SHALL FILE A STATEMENT
11 IN THE CIRCUIT COURT ACTION THAT THEY AGREE TO
12 SUBMIT TO THE JUDICIAL PROCESS AND THE
13 JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-
14 FIVE DAYS OF THE FILING OF THE ATTACHED FORM.
15 FAILURE TO SATISFY THIS CONDITION MAY RESULT IN
16 DISMISSAL OF THE CIRCUIT COURT ACTION WITH
17 PREJUDICE.

18 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE
19 HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE
20 FILING OF THE CONVERSION FORM.

21 MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY
22 BE AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS



1 AS AN ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING
2 TO AVOID FORECLOSURE OR TO MITIGATE THE EFFECTS
3 OF FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF
4 AN OWNER-OCCUPANT FILES FOR CONVERSION, DISPUTE
5 RESOLUTION MAY NOT BE AVAILABLE UNLESS ORDERED BY
6 A JUDGE.

7 A FORECLOSING LENDER WHO COMPLETES A
8 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY
9 ~~[SHALL]~~ COULD BE PROHIBITED UNDER HAWAII LAW FROM
10 PURSUING A DEFICIENCY JUDGMENT AGAINST A
11 MORTGAGOR ~~[UNLESS THE DEBT IS SECURED BY OTHER~~
12 ~~COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW]~~. IF
13 THIS ACTION IS CONVERTED TO A JUDICIAL
14 PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE
15 TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT
16 TO SEEK A DEFICIENCY JUDGMENT."

17 SECTION 29. Section 667-56, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§667-56[+] **Prohibited conduct.** It shall be a
20 prohibited practice for any foreclosing mortgagee to engage in
21 any of the following practices:

22 (1) Holding a public sale on a date, at a time, or at a



1 place other than that described in the public notice
2 of the public sale or a properly noticed postponement;

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

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

8 (4) Delaying the delivery of the recorded, conformed copy
9 of the conveyance document to a bona fide purchaser
10 who purchases in good faith for more than [~~forty-five~~]
11 sixty days after the completion of the public sale;

12 (5) Completing nonjudicial foreclosure proceedings during
13 short sale escrows with a bona fide purchaser if the
14 short sale offer is at least [~~five~~] ten per cent
15 greater than the public sale price; provided that
16 escrow is opened within ten days and closed within
17 forty-five days of the public sale; and provided
18 further that a bona fide short sale purchaser shall
19 have priority over any other purchaser;

20 (6) Completing nonjudicial foreclosure proceedings during
21 bona fide loan modification negotiations with the
22 mortgagor; or

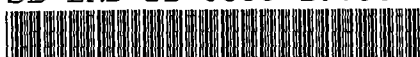


1 (7) Completing nonjudicial foreclosure proceedings against
2 a mortgagor who has been accepted or is being
3 evaluated for consideration for entry into a federal
4 loan modification program before obtaining a
5 certificate or other documentation confirming that the
6 mortgagor is no longer eligible for, or an active
7 participant of, that federal program."

8 SECTION 30. Section 667-57, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) Upon initiation of a foreclosure action pursuant to
11 part [±] IA or part II by a foreclosing mortgagee [~~as defined in~~
12 ~~section 667-21(b)~~], no junior lienholder shall be permitted to
13 initiate or continue a nonjudicial foreclosure pursuant to part
14 [±] IA or part II until the foreclosure initiated by the
15 foreclosing mortgagee has been concluded by a judgment issued by
16 a court pursuant to section [~~667-1,~~] 667-1.5, the recording of
17 an affidavit after public sale pursuant to section 667-5 or 667-
18 33, or the filing of [~~a settlement document~~] an agreement under
19 the mortgage foreclosure dispute resolution provisions of
20 section 667-81.

21 (b) Upon initiation of a foreclosure action pursuant to
22 part [±] IA or part II by a foreclosing mortgagee [~~as defined in~~



1 ~~section 667-21(b)]~~, no junior lienholder shall be permitted to
2 initiate a nonjudicial foreclosure pursuant to part II during
3 the pendency of a stay pursuant to section 667-83; provided that
4 a junior lienholder may initiate or continue with a nonjudicial
5 foreclosure pursuant to part II if ~~[the]~~:

- 6 (1) The junior lien foreclosure was initiated before the
7 foreclosure action by the foreclosing mortgagee~~[-]~~; or
8 (2) The junior lienholder is an association and has not
9 been provided notice of the foreclosure action
10 pursuant to sections 667-5.5 or 667-21.5, or has not
11 received written notification of a case opening
12 pursuant to section 667-79."

13 SECTION 31. Section 667-58, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~[§]667-58[§]~~ **Valid notice[-]; affiliate statement.** (a)

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

22 (b) The bureau of conveyances document number for the



1 affiliate statement required under subsection (a) shall be
2 included in any notice required to be personally served upon the
3 mortgagor or borrower under this chapter.

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

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



1 subsection (b), the appropriate affiliate statement of the
2 foreclosing mortgagee or lender authorizing the mortgage
3 servicer to act."

4 SECTION 32. Section 667-59, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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

17 SECTION 33. Section 667-60, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~+~~]**\$667-60[~~+~~]** Unfair or deceptive act or practice[~~-~~];
20 transfer of title. (a) Any foreclosing mortgagee who
21 [~~violates~~] engages in any of the following violations of this



1 chapter shall have committed an unfair or deceptive act or
2 practice under section 480-2[-]:

- 3 (1) Failing to provide a borrower or mortgagor with, or
4 failing to serve as required, the information required
5 by sections 667-5, 667-22, or 667-55;
- 6 (2) Failing to publish, or to post, information on the
7 mortgaged property, as required by sections 667-5,
8 667-27, or 667-28;
- 9 (3) Failing to take any action required by section 667-24
10 if the default is cured or an agreement is reached;
- 11 (4) Engaging in conduct prohibited under section 667-56;
- 12 (5) Holding a public sale in violation of section 667-25
13 or section 667-26;
- 14 (6) Failing to include in a public notice of public sale
15 the information required by section 667-27 or section
16 667-28;
- 17 (7) Failing to provide the information required by section
18 667-41;
- 19 (8) With regard to mortgage foreclosure dispute resolution
20 under part V:
- 21 (A) Failing to provide notice of the availability of
22 dispute resolution as required by section 667-75;



1 (B) Participating in dispute resolution without
2 authorization to negotiate a loan modification,
3 or without access to a person so authorized, as
4 required by section 667-80(a)(1);

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

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

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

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

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

18 (12) Attempting to collect a deficiency in violation of
19 section 667-38.

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 under this chapter shall be filed in the
8 circuit court of the circuit within which the foreclosed
9 property is situated no later than one hundred eighty days
10 following the recording of the affidavit required by section
11 667-5 or section 667-32, as applicable. If no such action is
12 filed within the one hundred eighty-day period, then title to
13 the property shall be deemed conclusively vested in the
14 purchaser free and clear of any claim by the mortgagor or anyone
15 claiming by, through, or under the mortgagor."

16 SECTION 34. 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 35. Section 667-71, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) This part shall not apply to actions by an
19 association to foreclose on a lien for amounts owed to the
20 association that arise under a declaration filed pursuant to
21 chapter 421J, 514A, or 514B, or to a mortgagor who has



1 previously participated in dispute resolution under this part
2 for the same property on the same mortgage loan."

3 SECTION 36. Section 667-73, Hawaii Revised Statutes, is
4 amended as follows by amending subsection (c) to read as
5 follows:

6 "(c) The department is authorized to contract with county,
7 state, or federal agencies, and with private organizations or
8 approved housing counselors or approved budget and credit
9 counselors for the performance of any of the functions of this
10 part. These contracts shall not be subject to chapter 103D or
11 103F."

12 SECTION 37. Section 667-74, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§667-74[+] **Availability of dispute resolution required**
15 **before foreclosure.** Before a public sale may be conducted
16 pursuant to section 667-5 or 667-25 for a residential property
17 that is occupied by an owner-occupant [~~as a primary residence~~],
18 the foreclosing mortgagee [~~shall~~], at the election of the owner-
19 occupant, shall participate in the mortgage foreclosure dispute
20 resolution program under this part to attempt to negotiate an
21 agreement that avoids foreclosure or mitigates damages in cases
22 where foreclosure is unavoidable."



1 SECTION 38. Section 667-75, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

5 (1) The name and contact information of the mortgagor and
6 the mortgagee;

7 (2) The subject property address and legal description,
8 including tax map key number and the certificate of
9 title or transfer certificate of title number if
10 ~~[within the land court's jurisdiction,]~~ registered in
11 the land court;

12 (3) The name and contact information of a person or entity
13 authorized to negotiate a loan modification on behalf
14 of the mortgagee;

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

19 (5) Contact information for all ~~[local]~~ approved housing
20 counselors;

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



1 (7) A statement that the mortgagor electing to participate
2 in the mortgage foreclosure dispute resolution program
3 shall provide a certification under penalty of perjury
4 to the department that the mortgagor is an owner-
5 occupant of the subject property, including supporting
6 documentation;

7 (8) A general description of the information that an
8 owner-occupant electing to participate in the mortgage
9 foreclosure dispute resolution program is required to
10 provide to participate in the program as described
11 under section 667-80(c)(2);

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

17 SECTION 39. Section 667-77, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"[+]§667-77[+] Notification to mortgagor by department.**

20 Within ten days after the mortgagee's filing of a notice of
21 default and intention to foreclose with the department, the
22 department shall mail a written notification by registered or



1 certified mail to the mortgagor that a notice of default and
2 intention to foreclose has been filed with the department. The
3 notification shall inform the mortgagor of an owner-occupant's
4 right to elect to participate in the foreclosure dispute
5 resolution program and shall include:

6 (1) Information about the mortgage foreclosure dispute
7 resolution program;

8 (2) A form for an owner-occupant to elect or to waive
9 participation in the mortgage foreclosure dispute
10 resolution program pursuant to this part that shall
11 contain instructions for the completion and return of
12 the form to the department and the department's
13 mailing address;

14 (3) A statement that the mortgagor electing to participate
15 in the mortgage foreclosure dispute resolution program
16 shall provide a certification under penalty of perjury
17 to the department that the mortgagor is an owner-
18 occupant of the subject property, including a
19 description of acceptable supporting documentation as
20 required by section 667-78(a)(2);

21 (4) A statement that the owner-occupant shall elect to
22 participate in the mortgage foreclosure dispute



1 resolution program pursuant to this part no later than
2 thirty days after the department's mailing of the
3 notice or the owner-occupant shall be deemed to have
4 waived the option to participate in the mortgage
5 foreclosure dispute resolution program;

6 (5) A description of the information required under
7 section 667-80(c)(2) that the owner-occupant shall
8 provide to the mortgagee and the neutral assigned to
9 the dispute resolution;

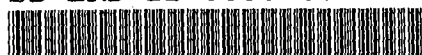
10 (6) A statement that the owner-occupant shall consult with
11 an approved housing counselor or approved budget and
12 credit counselor at least thirty days prior to the
13 first day of a scheduled dispute resolution session;

14 (7) Contact information for all ~~local~~ approved housing
15 counselors;

16 (8) Contact information for all ~~local~~ approved budget
17 and credit counselors; and

18 (9) Contact information for the department.

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



SECTION 40. Section 667-78, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

(1) The completed program election form provided

[pursuant]:

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

(B) On a website maintained by the department;

(2) Certification under penalty of perjury that the mortgagor is an owner-occupant, accompanied with any supporting documentation, including copies of recent utility billing statements, voter registration records, real estate property tax records, or state identification forms; and

(3) A program fee of \$300.

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

2. By amending subsection (c) to read:



1 "(c) If the owner-occupant does not elect to participate
2 in dispute resolution pursuant to this part, the department
3 shall notify the mortgagee within ten days of receiving an
4 election form indicating nonelection or the termination of the
5 thirty-day time period for election. After receiving the
6 department's notification, the mortgagee may proceed with the
7 nonjudicial foreclosure process according to the process
8 provided in part [F] IA or part II of this chapter, as
9 applicable."

10 SECTION 41. Section 667-79, Hawaii Revised Statutes, is
11 amended as follows:

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

13 "(a) If an owner-occupant elects to participate in the
14 mortgage foreclosure dispute resolution program, the department
15 shall open a dispute resolution case. Within twenty days of
16 receipt of the owner-occupant's election form and fee in
17 accordance with section 667-78, the department shall mail
18 written notification of the case opening to the parties and, if
19 applicable, the condominium or other homeowner association of
20 the project where the owner-occupant's property is located, by
21 registered mail, return receipt requested, which shall include:

22 (1) Notification of the date, time, and location of the



- 1 dispute resolution session;
- 2 (2) An explanation of the dispute resolution process;
- 3 (3) Information about the dispute resolution program
- 4 requirements; and
- 5 (4) Consequences and penalties for noncompliance.

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

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

11 "(c) The written notification of a case opening under this
12 section shall operate as a stay of the foreclosure proceeding in
13 accordance with section 667-83[7] and may be ~~[filed or]~~
14 ~~recorded[7, as appropriate, at the land court or bureau of~~
15 ~~conveyances]."~~

16 SECTION 42. Section 667-80, Hawaii Revised Statutes, is
17 amended as follows:

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

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



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

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

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

2. By amending subsection (c) to read:

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

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

(A) A copy of the promissory note, signed by the mortgagor, including any endorsements, allonges,



1 amendments, or riders to the note evidencing the
2 mortgage debt;

3 (B) A copy of the mortgage document and any
4 amendments, riders, or other documentation
5 evidencing the mortgagee's right of nonjudicial
6 foreclosure and interest in the property
7 including any interest as a successor or
8 assignee; and

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

11 (2) The owner-occupant shall provide to the department and
12 the mortgagee:

13 (A) Documentation showing income qualification for a
14 loan modification, including any copies of pay
15 stubs, W-2 forms, social security or disability
16 income, retirement income, child support income,
17 or any other income that the owner-occupant deems
18 relevant to the owner-occupant's financial
19 ability to repay the mortgage;

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

22 (C) Any records or correspondence available



1 evidencing a loan modification or amendment;

2 (D) Any records or correspondence available that
3 indicate the parties are currently engaged in
4 bona fide negotiations to modify the loan or
5 negotiate a settlement of the delinquency;

6 (E) Names and contact information for approved
7 housing counselors, approved budget and credit
8 counselors, or representatives of the mortgagee,
9 with whom the owner-occupant may have or is
10 currently working with to address the
11 delinquency; and

12 (F) Verification of counseling by an approved housing
13 counselor or approved budget and credit
14 counselor."

15 SECTION 43. Section 667-81, Hawaii Revised Statutes, is
16 amended by amending subsections (b), (c), and (d) to read as
17 follows:

18 "(b) If, despite the parties' participation in the dispute
19 resolution process and compliance with the requirements of this
20 part, the parties are not able to come to an agreement, the
21 neutral shall file a closing report with the department that the
22 parties met the program requirements. The mortgagee may [~~file~~



1 ~~or~~] record the report [~~at the bureau of conveyances or the land~~
2 ~~court, as appropriate~~]. Upon recording of the report pursuant
3 to this subsection, the foreclosure process shall resume along
4 the timeline as it existed on the date before the mortgagor
5 elected dispute resolution, and may proceed as otherwise
6 provided by law. The mortgagee shall notify the mortgagor of
7 the recording date and document number of this report and the
8 deadline date to cure default in an amended foreclosure notice.
9 Nothing in this subsection shall be construed to require the
10 neutral to wait the full sixty days allotted for dispute
11 resolution to determine that the parties were unable to reach an
12 agreement and file a report.

13 (c) If the parties have complied with the requirements of
14 this part and have reached an agreement, the agreement shall be
15 memorialized in [~~a settlement document~~] writing and signed by
16 the parties or their authorized representatives. [~~If the~~
17 ~~parties or their authorized representatives participate in the~~
18 ~~dispute resolution session in person, the settlement document~~
19 ~~shall be signed in the presence of the neutral. If any of the~~
20 ~~parties or their authorized representatives participate in the~~
21 ~~dispute resolution through telephone, videoconference, or other~~
22 ~~immediately available contemporaneous telecommunications medium,~~



1 ~~the settlement document shall be signed and returned to the~~
2 ~~neutral no later than ten days after the conclusion of the~~
3 ~~dispute resolution session.]~~ The parties shall be responsible
4 for drafting any agreement reached[, ~~and for filing or recording~~
5 ~~with the land court or the bureau of conveyances, as~~
6 ~~appropriate,]~~ and enforcing the [~~settlement document.~~]
7 agreement. [~~The neutral shall file the settlement document with~~
8 ~~the neutral's closing report.]~~ The [~~settlement document~~]
9 agreement shall be a contract between the parties and shall be
10 enforceable in a private contract action in a court of
11 appropriate jurisdiction in the event of breach by either party.
12 If the [~~settlement document~~] agreement allows for foreclosure or
13 other transfer of the subject property, the stay of the
14 foreclosure under section 667-83 shall be released upon [~~filing~~
15 ~~or recording]~~ the [~~settlement document~~] recordation of the
16 neutral's closing report [~~with the land court or bureau of~~
17 ~~conveyances, as appropriate]~~. Thereafter, the office of the
18 assistant registrar of the land court or bureau of conveyances
19 may record a notice of sale or other conveyance document, as
20 appropriate.

21 (d) If the parties to a dispute resolution process reach
22 an agreement which resolves the matters at issue in the dispute



1 resolution before the first day of the scheduled dispute
2 resolution session scheduled pursuant to this section, the
3 parties shall notify the neutral by that date. The neutral
4 shall thereafter issue a closing report that the parties have
5 reached an agreement prior to the commencement of a dispute
6 resolution session. If the agreement provides for foreclosure,
7 the parties shall memorialize the agreement in a writing signed
8 by both parties ~~[and provided to the neutral. Any agreement~~
9 ~~authorizing foreclosure shall be attached to the neutral's~~
10 ~~closing report]~~. The parties may ~~[file or]~~ record the report
11 ~~[at the bureau of conveyances or the land court, as~~
12 ~~appropriate]~~. If the agreement authorizes foreclosure, the stay
13 of the foreclosure under section 667-83 shall be released upon
14 ~~[filing or recording with the land court or bureau of~~
15 ~~conveyances, as appropriate.]~~ the recordation of the report.
16 Thereafter, the land court or bureau of conveyances may record a
17 notice of sale or other conveyance document, as appropriate. No
18 fees shall be refunded if the parties come to an agreement prior
19 to a dispute resolution session conducted pursuant to this
20 part."

21 SECTION 44. Section 667-82, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) The neutral's closing report shall indicate if the
2 mortgagee or the owner-occupant failed to comply with
3 requirements of the mortgage foreclosure dispute resolution
4 program.

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

7 (A) Participation in dispute resolution without the
8 authority to negotiate a loan modification or
9 without access at all stages of the dispute
10 resolution process to a person who is so
11 authorized;

12 (B) Failure to provide the required information or
13 documents;

14 (C) Refusal to cooperate or participate in dispute
15 resolution; or

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

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

20 (A) Failure to provide the required information or
21 documents; or

22 (B) Refusal to cooperate or participate in dispute



1 resolution[-];

2 provided that failure by the mortgagee and the owner-
3 occupant to reach an agreement to resolve the dispute
4 shall not constitute failure by the mortgagee or the
5 owner-occupant to comply with the requirements of the
6 mortgage foreclosure dispute resolution program."

7 SECTION 45. Section 667-83, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The written notification of a case opening under
10 section 667-79 shall operate as a stay of the foreclosure
11 proceeding[~~7~~] and may be [~~filed or~~] recorded[~~, as appropriate,~~
12 ~~at the land court or bureau of conveyances.~~]; provided that the
13 written notification shall not act as a stay on a foreclosure
14 proceeding by an association unless the association has been
15 provided notice pursuant to sections 667-5.5, 667-21.5, or 667-
16 79."

17 SECTION 46. Section 667-86, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) All persons who record an affidavit in the office of
20 the assistant registrar of the land court, pursuant to section
21 501-118, or who record a conveyance document in the bureau of
22 conveyances for an owner-occupied property subject to a



1 nonjudicial power of sale foreclosure shall pay a fee of \$100,
2 which shall be deposited into the mortgage foreclosure dispute
3 resolution special fund on a quarterly basis."

4 **PART IV**

5 SECTION 47. Section 421J-A, Hawaii Revised Statutes, is
6 amended by amending subsection (h) to read as follows:

7 "(h) The amount of the special assessment assessed under
8 subsection (g) shall not exceed the total amount of unpaid
9 regular monthly common assessments that were assessed during the
10 [~~twelve~~] six months immediately preceding the completion of the
11 judicial or nonjudicial power of sale foreclosure. In no event
12 shall the amount of the special assessment exceed the sum of
13 [~~\$7,200.~~] \$3,600."

14 SECTION 48. Section 454M-10, Hawaii Revised Statutes, is
15 amended to read as follows:

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



1 SECTION 49. Section 667-53, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) An owner-occupant of a residential property that is
4 subject to nonjudicial foreclosure under part IA or II may
5 convert the action to a judicial foreclosure provided that:

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

14 (2) Within forty-five days of the filing of the petition,
15 all owner-occupants and mortgagors of an interest in
16 the residential property whose interests are pledged
17 or otherwise encumbered by the mortgage that is being
18 foreclosed and all persons who have signed the
19 promissory note or other instrument evidencing the
20 debt secured by the mortgage that is being foreclosed,
21 including without limitation co-obligors and
22 guarantors, shall file a statement in the circuit



1 court action that they agree to submit themselves to
2 the judicial process and the jurisdiction of the
3 circuit court; provided further that if this condition
4 is not satisfied, the circuit court action may be
5 dismissed with prejudice as to the right of any owner-
6 occupant to convert the action to a judicial
7 proceeding, and the mortgagee may proceed
8 nonjudicially;

9 (3) Filing a petition pursuant to paragraph (1) shall
10 automatically stay the nonjudicial foreclosure action
11 unless and until the judicial proceeding has been
12 dismissed;

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

18 (5) All parties joined in the converted judicial
19 proceeding may assert therein any claims and defenses
20 that they could have asserted had the action
21 originally been commenced as a judicial foreclosure
22 action; and



(6) The fee for filing the petition shall be \$250, which shall be deposited into the [~~mortgage foreclosure dispute resolution special fund established under section 667-86.~~] compliance resolution fund."

PART V

SECTION 50. 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;

(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) Section 10 shall take effect on July 1, 2012;

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

~~[(5)]~~ (4) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes,



1 shall be reenacted in the form in which it read on the
2 day before the effective date of this Act; and

3 ~~[(46)]~~ (5) Upon the repeal of section 1, all moneys
4 remaining in the mortgage foreclosure dispute
5 resolution special fund established under section 667-
6 P, Hawaii Revised Statutes, shall be transferred to
7 the compliance resolution fund established under
8 section 26-9(o), Hawaii Revised Statutes."

9 PART VI

10 SECTION 51. Section 667-21.6, Hawaii Revised Statutes, is
11 repealed.

12 ~~["[S667-21.6] Foreclosure of association lien; cure of~~
13 ~~default. If a unit owner notifies the association or its~~
14 ~~attorney by certified mail return receipt requested or by hand-~~
15 ~~delivery within five business days following a response to the~~
16 ~~unit owner's request for the amount to cure a default, together~~
17 ~~with an estimated amount of the foreclosing association's~~
18 ~~attorneys' fees and costs, and all other fees and costs related~~
19 ~~to the default estimated to be incurred by the foreclosing~~
20 ~~association, that it intends to cure the default, the~~
21 ~~association shall allow sixty calendar days to the unit owner to~~
22 ~~cure the default. The association shall not reject a reasonable~~



1 ~~payment plan for cure of the default; provided that a reasonable~~
2 ~~plan shall require the owner to pay at a minimum the current~~
3 ~~maintenance fee and some amount owed on the past due balance.~~
4 ~~From and after the date that the unit owner gives written notice~~
5 ~~to the association of its intent to cure the delinquency, any~~
6 ~~nonjudicial foreclosure of the lien shall be stayed pending the~~
7 ~~sixty-day period or a longer period that is agreed upon by the~~
8 ~~parties."]~~

9 SECTION 52. Section 667-50, Hawaii Revised Statutes, is
10 repealed.

11 ~~["§667-50] Definitions. For purposes of this chapter,~~
12 ~~"foreclosure notice" shall mean notice of intention to foreclose~~
13 ~~given pursuant to section 667-5 or notice of default and~~
14 ~~intention to foreclose prepared pursuant to section 667-22."]~~

15 SECTION 53. Section 667-61, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§667-61] Definitions. For the purposes of sections~~
18 ~~667-62 to 667-65, "time share interest" shall have the same~~
19 ~~meaning as in section 514E-1."]~~

20 SECTION 54. Section 667-72, Hawaii Revised Statutes, is
21 repealed.

22 ~~["§667-72] Definitions. As used in this part:~~



1 ~~"Approved budget and credit counselor" means a budget and~~
2 ~~credit counseling agency that has received approval from a~~
3 ~~United States trustee or bankruptcy administrator to provide~~
4 ~~instructional courses concerning personal financial management~~
5 ~~pursuant to Title 11 United States Code section 111.~~

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

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

14 ~~"Department" means the department of commerce and consumer~~
15 ~~affairs.~~

16 ~~"Director" means the director of commerce and consumer~~
17 ~~affairs.~~

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



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

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

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

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

11 ~~(1) Who owns an interest in the residential property, and~~
12 ~~the interest is encumbered by the mortgage being~~
13 ~~foreclosed; and~~

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

18 SECTION 55. In codifying the new sections added by
19 sections 2 and 3 of this Act, the revisor of statutes shall
20 substitute appropriate section numbers for the letters used in
21 designating the new sections in this Act.



SECTION 56. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 57. This Act shall take effect upon its approval; provided that:

(1) Section 7 of this Act, amending section 607-5(a) and (b), Hawaii Revised Statutes, and the amendments made to section 667-53(a)(6), Hawaii Revised Statutes, in section 26 of this Act, shall take effect on August 15, 2012;

(2) Section 25 of this Act, amending section 667-41, Hawaii Revised Statutes, shall take effect on September 1, 2012; and

(3) Sections 47, 48, and 49 in part IV of this Act, amending sections 421J-A(h), 454M-10, and 667-53(a)(6), Hawaii Revised Statutes, shall take effect on September 30, 2014.

INTRODUCED BY:

Andy Lee
Melanie
Erin Ann Akland
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Randy H. Bui
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Report Title:

Mortgage Foreclosures; Homeowner Association Liens and Assessments

Description:

Implements the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments.

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

