

ACT 48

S.B. NO. 651

A Bill for an Act Relating to Mortgage Foreclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MORTGAGE FORECLOSURE DISPUTE RESOLUTION

§667-A Applicability. (a) This part shall apply to nonjudicial foreclosures conducted by power of sale under parts I and II, of residential real property that is occupied by one or more mortgagors who are owner-occupants.

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

(c) This part shall not apply to a power of sale foreclosure that has been converted to a judicial foreclosure action pursuant to section 667-U.

§667-B Definitions. As used in this part:

“Approved budget and credit counselor” means a budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to Title 11 United States Code Section 111.

“Approved housing counselor” means a housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services pursuant to Section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code Section 1701x.

“Association” has the same meaning as in sections 514B-3 and 421J-2.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Dispute resolution” means a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

“Mortgagee” has the same meaning as the term is defined in section 667-21.

“Mortgagor” has the same meaning as the term is defined in section 667-21.

“Neutral” means a person who is a dispute resolution specialist assigned to facilitate the dispute resolution process required by this part.

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

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person’s primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

§667-C Mortgage foreclosure dispute resolution program; administration.

(a) There is established in the department a mortgage foreclosure dispute resolution program to provide an owner-occupant an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

(b) The judiciary, through the center for alternative dispute resolution, shall provide assistance to the department in program matters including:

- (1) Contract procurement;

- (2) Performance oversight, such as monitoring compliance with the program requirements; and
- (3) Management services to oversee any contract between the department and a private organization retained by the department to provide dispute resolution services or personnel, including providing the department with monthly status reports and evaluations.

The department and the judiciary shall execute a memorandum of understanding that establishes their rights and responsibilities relating to the mortgage foreclosure dispute resolution program, which may be amended from time to time.

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

§667-D Availability of dispute resolution required before foreclosure. Before a public sale may be conducted pursuant to section 667-5 or 667-25 for a residential property that is occupied by an owner-occupant as a primary residence, the foreclosing mortgagee shall, at the election of the owner-occupant, participate in the mortgage foreclosure dispute resolution program under this part to attempt to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

§667-E Notice of dispute resolution availability required. (a) A foreclosure notice served pursuant to section 667-5 or 667-22(e) shall include notice that the mortgagee is required, at the election of an owner-occupant, to participate in the mortgage foreclosure dispute resolution program pursuant to this part to attempt to avoid foreclosure or to mitigate damages where foreclosure is unavoidable.

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

- (1) The name and contact information of the mortgagor and the mortgagee;
- (2) The subject property address and legal description, including tax map key number and the certificate of title number if within the land court's jurisdiction;
- (3) The name and contact information of a person or entity authorized to negotiate a loan modification on behalf of the mortgagee;
- (4) A statement that the mortgagor shall consult with an approved housing counselor or an approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (5) Contact information for all local approved housing counselors;
- (6) Contact information for all local approved budget and credit counselors;
- (7) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including supporting documentation;
- (8) A general description of the information that an owner-occupant electing to participate in the mortgage foreclosure dispute resolution program is required to provide to participate in the program as described under section 667-J(c)(2);

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

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

(b) Violation of this section shall constitute an unfair and deceptive act or practice subject to section 480-2.

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

- (1) Information about the mortgage foreclosure dispute resolution program;
- (2) A form for an owner-occupant to elect or to waive participation in the mortgage foreclosure dispute resolution program pursuant to this part that shall contain instructions for the completion and return of the form to the department and the department's mailing address;
- (3) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including a description of acceptable supporting documentation as required by section 667-H(a)(2);
- (4) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department's mailing of the notice or the owner-occupant shall be deemed to have waived the option to participate in the mortgage foreclosure dispute resolution program;
- (5) A description of the information required under section 667-J(c)(2) that the owner-occupant shall provide to the mortgagee and the neutral assigned to the dispute resolution;
- (6) A statement that the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (7) Contact information for all local approved housing counselors;
- (8) Contact information for all local approved budget and credit counselors; and
- (9) Contact information for the department.

The notification shall be mailed to the subject property address and any other addresses for the mortgagor as provided in the mortgagee's notice of dispute

resolution under 667-E and the foreclosure notice under section 667-5 or 667-22(a).

§667-H Owner-occupant's election of dispute resolution; owner-occupant program fee; right to dispute resolution waived. (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 to section 667-G(2);
- (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-G.

(b) If the completed form and fee are not received within the required time period, the owner-occupant shall be deemed to have waived any right to participate in the mortgage foreclosure dispute resolution program with respect to the subject property and the foreclosure notice filed with the department.

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

§667-I Notification of opening a dispute resolution case; mortgagee's program fee. (a) If an owner-occupant elects to participate in the mortgage foreclosure dispute resolution program, the department shall open a dispute resolution case. Within twenty days of receipt of the owner-occupant's election form and fee in accordance with section 667-H, the department shall mail written notification of the case opening to the parties by registered mail, return receipt requested, which shall include:

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

The dispute resolution session shall be scheduled for a date no less than thirty and no more than sixty days from the date of the notification of case opening, unless mutually agreed to by the parties and the neutral.

(b) Within fourteen days of the date of the mailing of the written notification, the mortgagee shall pay a program fee of \$300 to the department.

(c) The written notification of a case opening under this section shall operate as a stay of the foreclosure proceeding in accordance with section 667-M, and may be filed or recorded, as appropriate, at the land court or bureau of conveyances.

§667-J Parties; requirements; process. (a) The parties to a dispute resolution process conducted under this part shall consist of the owner-occupant or the owner-occupant's representative, and the mortgagee or the 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; and
 - (3) The owner-occupant may be assisted by an approved housing counselor or approved budget and credit counselor.
- (b) No fewer than thirty days prior to the first day of a scheduled dispute resolution session pursuant to this part, the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor.
- (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, amendments, or riders to the note evidencing the mortgage debt;
 - (B) A copy of the mortgage document and any amendments, riders, or other documentation evidencing the mortgagee's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee; and
 - (C) Financial records and correspondence that confirm the mortgage loan is in default.
 - (2) The owner-occupant shall provide to the department and the mortgagee:
 - (A) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the mortgage;
 - (B) Any records or correspondence available which may dispute that the mortgage loan is in default;
 - (C) Any records or correspondence available evidencing a loan modification or amendment;
 - (D) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
 - (E) Names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the delinquency; and
 - (F) Verification of counseling by an approved housing counselor or approved budget and credit counselor.
 - (d) The dispute resolution session shall consist of at least one meeting lasting no more than three hours, which may be extended by the equivalent of

one additional three-hour session on the same or a different day at the neutral's discretion.

The parties shall be present in person at the dispute resolution session; provided that a party may submit a written request to the department at least fourteen days prior to the scheduled dispute resolution session to participate through telephone, videoconference, or other contemporaneous telecommunications medium. A request to participate through a telecommunications medium shall be granted only for good cause and upon agreement of the neutral and the other party to the dispute resolution. For purposes of this subsection, "good cause" means an event or circumstance outside of the requesting party's control that makes in-person participation impossible. The neutral shall have the discretion to postpone a dispute resolution session in order to allow the requesting party to participate in person; provided that postponement shall not delay the dispute resolution process beyond timelines established by this part.

(e) A dispute resolution process conducted pursuant to this part shall use the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website or a different program or process if agreed to by both parties and the neutral.

(f) The dispute resolution process shall conclude within sixty days from the first scheduled meeting between the parties to the dispute resolution and the neutral; provided that the neutral shall have the authority to extend this period. Nothing in this part shall be construed to require the dispute resolution process to take the full sixty days allotted to reach a negotiated agreement.

§667-K Outcome of dispute resolution; neutral's closing report. (a) Within ten days from the conclusion of the dispute resolution, the neutral shall file a closing report with the department, which verifies the parties' presence at the session, compliance with the requirements of this part, and reports whether the parties reached an agreement to resolve the dispute and the date of the dispute resolution's conclusion. Upon receipt of the neutral's closing report, the department shall close the case. The department shall forward a written copy of the neutral's closing report by registered or certified mail to the parties within five days after receipt from the neutral.

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

(c) If the parties have complied with the requirements of this part and have reached an agreement, the agreement shall be memorialized in a settlement document signed by the parties or their authorized representatives. If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral. If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available

contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session. The parties shall be responsible for drafting any agreement reached, and for filing or recording with the land court or the bureau of conveyances, as appropriate, and enforcing the settlement document. The neutral shall file the settlement document with the neutral's closing report. The settlement document shall be a contract between the parties and shall be enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party. If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-M shall be released upon filing or recording the settlement document with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate.

(d) If the parties to a dispute resolution process reach an agreement which resolves the matters at issue in the dispute resolution before the first day of the scheduled dispute resolution session scheduled pursuant to this section, the parties shall notify the neutral by that date. The neutral shall thereafter issue a closing report that the parties have reached an agreement prior to the commencement of a dispute resolution session. If the agreement provides for foreclosure, the parties shall memorialize the agreement in a writing signed by both parties and provided to the neutral. Any agreement authorizing foreclosure shall be attached to the neutral's closing report. The parties may file or record the report at the bureau of conveyances or the land court, as appropriate. If the agreement authorizes foreclosure, the stay of the foreclosure under section 667-M shall be released upon filing or recording with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate. No fees shall be refunded if the parties come to an agreement prior to a dispute resolution session conducted pursuant to this part.

§667-L Noncompliance with requirements; statement. (a) The neutral's closing report shall indicate if the mortgagee or the owner-occupant failed to comply with requirements of the mortgage foreclosure dispute resolution program.

- (1) In the case of the mortgagee, failure to comply with the requirements of the program may consist of:
 - (A) Participation in dispute resolution without the authority to negotiate a loan modification or without access at all stages of the dispute resolution process to a person who is so authorized;
 - (B) Failure to provide the required information or documents;
 - (C) Refusal to cooperate or participate in dispute resolution; or
 - (D) Refusal or failure to pay program fees under section 667-I in a timely manner.
- (2) In the case of the owner-occupant, failure to comply with the requirements of the program may consist of:
 - (A) Failure to provide the required information or documents; or
 - (B) Refusal to cooperate or participate in dispute resolution.
- (b) If the neutral determines that the noncompliance was unjustified as a result of circumstances within a party's control, sanctions may be imposed on the noncompliant party as follows:
 - (1) Sanctions against a mortgagee for unjustified noncompliance with the program shall include a stay of the foreclosure under section

667-M and a fine payable to the owner-occupant not to exceed \$1,500; or

- (2) Sanctions against an owner-occupant for unjustified noncompliance with the program shall include a removal of the stay of the foreclosure pursuant to section 667-M(b) and a fine payable to the mortgagee not to exceed \$1,500.

§667-M Stay of nonjudicial foreclosure proceedings. (a) The written notification of a case opening under section 667-I shall operate as a stay of the foreclosure proceeding, and may be filed or recorded, as appropriate, at the land court or bureau of conveyances.

(b) Upon a stay pursuant to subsection (a), a mortgagee shall not foreclose upon a mortgage:

- (1) Until the neutral's report confirming either that the parties have been unable to reach an agreement under section 667-K(b) or the parties have reached an agreement that authorizes foreclosure under section 667-K (c) or (d) is filed with the department;
- (2) If a statement of noncompliance has been issued against the mortgagee pursuant to section 667-L; or
- (3) Unless otherwise provided by law or court order.

§667-N Confidentiality. Personal financial information and other sensitive personal information, including information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness which is disclosed by the parties in the course of the mortgage foreclosure dispute resolution program, shall be confidential and not subject to public disclosure under chapter 92F or any other state law.

§667-O Neutral qualifications; status and liability. A neutral shall possess sufficient knowledge in the areas of law, real estate, or finance and shall receive sufficient training to be able to effectuate the purposes of this part.

A neutral shall not be liable for any act or omission that occurs in relation to the administration or operation of the mortgage foreclosure dispute resolution program. A neutral shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the mortgage foreclosure dispute resolution program.

§667-P Mortgage foreclosure dispute resolution special fund. (a) There is established in the state treasury a special fund to be known as the mortgage foreclosure dispute resolution special fund to be administered by the department to implement and operate the mortgage foreclosure dispute resolution program established by this part. Moneys collected as fees or fines under sections 454M-10, 667-F, 667-H, 667-I, and 667-U, for the mortgage dispute resolution program and contributions from the sources identified under subsection (b) shall be deposited in the fund. Interest earned from the balance of the fund shall become a part of the fund.

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

SECTION 2. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§454M- Unlicensed foreclosure actions voided. Any action taken in connection with a mortgage foreclosure under chapter 667 by a nonexempt person who engages in the business of mortgage servicing without a license as provided in this chapter shall be void for purposes of chapter 667.”

SECTION 3. Chapter 667, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

“§667-Q Recordation of foreclosure notice. The foreclosing mortgagee may record a copy of the foreclosure notice with the assistant registrar of the land court or the bureau of conveyances, as appropriate, in a manner similar to recordation of notices of pendency of action under section 501-151 or section 634-51, as applicable. The recorded notice shall have the same effect as a notice of pendency of action. From and after the recordation of the notice, any person who becomes a purchaser or encumbrancer of the mortgaged property shall be deemed to have constructive notice of the power of sale foreclosure and shall be bound by the foreclosure.

§667-R Location of public sale following power of sale foreclosure. The public sale of the mortgaged property shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of mortgaged property located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of mortgaged property located in the eastern portion of the county of Hawaii;
- (3) At a state facility in Kailua-Kona, for a public sale of mortgaged property located in the western portion of the county of Hawaii;
- (4) At a state facility in the county seat of Maui, for a public sale of mortgaged property located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of mortgaged property located in the county of Kauai;

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

SECTION 4. Chapter 667, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

“§667-S Foreclosure notice; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure

and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply when the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation.

§667-T Foreclosure of association lien; cure of default. If a unit owner notifies the association or its attorney by certified mail return receipt requested or by hand-delivery within five business days following a response to the unit owner's request for the amount to cure a default, together with an estimated amount of the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing association, that it intends to cure the default, the association shall allow sixty calendar days to the unit owner to cure the default. The association shall not reject a reasonable payment plan for cure of the default; provided that a reasonable plan shall require the owner to pay at a minimum the current maintenance fee and some amount owed on the past due balance. From and after the date that the unit owner gives written notice to the association of its intent to cure the delinquency, any nonjudicial foreclosure of the lien shall be stayed pending the sixty-day period or a longer period that is agreed upon by the parties."

SECTION 5. Chapter 667, Hawaii Revised Statutes, is amended by adding three new sections to part III to be appropriately designated and to read as follows:

"§667-U Conversion to judicial foreclosure; residential property; conditions. (a) An owner-occupant of a residential property that is subject to nonjudicial foreclosure under part I or II may convert the action to a judicial foreclosure provided that:

- (1) A petition conforming to section 667-V shall be filed with the circuit court in the circuit where the residential property is located, stating that the owner-occupant of the property elects to convert the nonjudicial foreclosure to a judicial foreclosure proceeding no later than thirty days after the foreclosure notice is served on the owner-occupant as required by section 667-5 or 667-22;
- (2) Within forty-five days of the filing of the petition, all owner-occupants and mortgagors of an interest in the residential property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors, shall file a statement in the circuit court action that they agree to submit themselves to the judicial process and the jurisdiction of the circuit court; provided further that if this condition is not satisfied, the circuit court action may be dismissed with prejudice as to the right of any owner-occupant to convert the action to a judicial proceeding, and the mortgagee may proceed nonjudicially;
- (3) Filing a petition pursuant to paragraph (1) shall automatically stay the nonjudicial foreclosure action unless and until the judicial proceeding has been dismissed;
- (4) The person filing the petition pursuant to paragraph (1) shall have an affirmative duty to promptly notify the Hawaii attorney who is

handling the nonjudicial foreclosure about the filing of the complaint for conversion;

- (5) All parties joined in the converted judicial proceeding may assert therein any claims and defenses that they could have asserted had the action originally been commenced as a judicial foreclosure action; and
- (6) Notwithstanding chapter 607, the fee for filing the petition shall be not more than \$525, of which \$250 shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-P; provided that if the mortgage foreclosure dispute resolution program under part has not yet been implemented, the filing fee shall be not more than \$300.
- (b) This section shall not apply to foreclosures of association liens that arise under a declaration filed pursuant to chapter 514A or 514B.
- (c) This section shall not apply to a foreclosure for which the mortgagor has elected to participate in the mortgage foreclosure dispute resolution program pursuant to part .
- (d) The judiciary may create and adopt a form for a conversion petition.

§667-V Petition for conversion; residential property; required contents. A petition filed pursuant to section 667-U shall contain at a minimum:

- (1) A caption setting forth the name of the court, the title of the action, and the file number; provided that the title of the action shall include the names of the filing party as petitioner and the foreclosing party as the respondent;
- (2) The name, mailing address, and telephone number of the filing party;
- (3) The address or tax map key number and the certificate of title or transfer certificate of title number if within the land court's jurisdiction, of the property subject to the foreclosure action;
- (4) A statement identifying all other owner-occupants and mortgagors of the property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors;
- (5) A certification under penalty of perjury that the filing party is an owner-occupant of the subject property and seeks to convert the nonjudicial foreclosure to a judicial proceeding;
- (6) A statement certifying that the filing party served a copy of the petition on the attorney identified in the foreclosure notice under section 667-5 or 667-22 either by personal delivery at, or by postage prepaid United States mail to, the address of the attorney as set forth in the foreclosure notice under section 667-5 or 667-22; and
- (7) A copy of the foreclosure notice that was served on the filing party pursuant to section 667-5 or 667-22 and for which the filing party is seeking to convert to a judicial proceeding.
- (b) The assignment of parties in the petition for conversion pursuant to subsection (a) shall relate to the petition for conversion only and shall not be construed to affect the assignment of parties in a nonjudicial power of sale foreclosure converted to a judicial foreclosure pursuant to this part.

§667-W Notice of default and intention to foreclose; residential property; required statement on conversion. (a) The foreclosure notice that is served as required under section 667-5 or 667-22 shall include, in addition to the contents required under section 667-5 or 667-22, a statement printed in not less than fourteen-point font as follows:

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

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

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

MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID FORECLOSURE OR TO MITIGATE THE EFFECTS OF FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF AN OWNER-OCCUPANT FILES FOR CONVERSION, DISPUTE RESOLUTION MAY NOT BE AVAILABLE UNLESS ORDERED BY A JUDGE.

A FORECLOSING LENDER WHO COMPLETES A NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY SHALL BE PROHIBITED UNDER HAWAII LAW

FROM PURSUING A DEFICIENCY JUDGMENT AGAINST A MORTGAGOR UNLESS THE DEBT IS SECURED BY OTHER COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW. IF THIS ACTION IS CONVERTED TO A JUDICIAL PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT TO SEEK A DEFICIENCY JUDGMENT.

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

SECTION 6. Chapter 667, Hawaii Revised Statutes, is amended by adding six new sections to part III to be appropriately designated and to read as follows:

"§667-X Definitions. For purposes of this chapter, "foreclosure notice" shall mean notice of intention to foreclose given pursuant to section 667-5 or notice of default and intention to foreclose prepared pursuant to section 667-22.

§667-Y Prohibited conduct. It shall be a prohibited practice for any foreclosing mortgagee to engage in any of the following practices:

- (1) Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- (2) Specifying a fictitious place in the public notice of the public sale;
- (3) Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale;
- (4) Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than forty-five days after the completion of the public sale;
- (5) Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least five per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;
- (6) Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- (7) Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program.

§667-Z Suspension of foreclosure actions by junior lienholders. (a) Upon initiation of a foreclosure action pursuant to part I or part II by a foreclosing mortgagee as defined in section 667-21(b), no junior lienholder shall be permitted to initiate or continue a nonjudicial foreclosure pursuant to part I until the foreclosure initiated by the foreclosing mortgagee has been concluded by a judgment issued by a court pursuant to section 667-1, the recording of an affidavit after public sale pursuant to section 667-5 or 667-33, or the filing of a settlement document under the mortgage foreclosure dispute resolution provisions of section 667-K.

(b) Upon initiation of a foreclosure action pursuant to part I or part II by a foreclosing mortgagee as defined in section 667-21(b), no junior lienholder shall be permitted to initiate a nonjudicial foreclosure pursuant to part II during the pendency of a stay pursuant to section 667-M; provided that a junior lienholder may initiate or continue with a nonjudicial foreclosure pursuant to part II if the junior lien foreclosure was initiated before the foreclosure action by the foreclosing mortgagee.

§667-AA Valid notice. (a) Any notices made pursuant to this chapter may be issued only by persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement signed by that foreclosing mortgagee or lender and recorded at the bureau of conveyances identifying the agency or affiliate relationship and the authority granted or conferred to that agent or representative.

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

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

§667-AB Actions and communications with the mortgagor in connection with a foreclosure. A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements made on its behalf by its agents including but not limited to its employees, representatives, mortgage servicers, or persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement recorded in the bureau of conveyances pursuant to section 667-AA.

For purposes of this section, "foreclosing mortgagee" has the same meaning as in section 667-21.

§667-AC Unfair or deceptive act or practice. Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2."

SECTION 7. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485A-202(a)(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be

deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, sections 431:10C-115 and 431:10G-107, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium education trust fund, section 514B-71[-], and the mortgage foreclosure dispute resolution special fund, section 667-P. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485A-202(a)(26) has complied with chapter 514E or section 485A-202(a)(26);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 8. Section 454M-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) ~~[A] No person [is engaged] shall engage~~ in the business of mortgage servicing ~~[if the person provides those services] in this State [even if] unless~~ the person providing services has ~~[no] a physical presence in the State[-]~~ pursuant to section 454M-5(a)(5)."

SECTION 9. Section 454M-4, Hawaii Revised Statutes, is amended to read as follows:

~~"[§454M-4]] License; fees; renewals[-]; voluntary surrender of license.~~

(a) An applicant for licensure shall file an application on a form prescribed by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) The applicant shall submit any other information that the commissioner may require, including the applicant's:

- (1) ~~[The applicant's form]~~ Form and place of organization;
- (2) ~~[The applicant's tax]~~ Tax identification number; and
- (3) ~~[The applicant's proposed]~~ Proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members ~~[has] have~~ ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, ~~[has] have~~ ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or ~~[has] have~~ ever been convicted of any felony.

(c) A mortgage servicer licensed under this chapter may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its mortgage servicer license. Notice pursuant to this subsection shall be given at least thirty days before the surrender of the license and shall include:

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) The original license issued pursuant to this chapter to the mortgage servicer; and
- (5) If applicable, a copy of all notices to affected borrowers required by the Real Estate Settlement Procedures Act, Title 12 United States Code Section 2601 et seq., or by regulations adopted pursuant to the Real Estate Settlement Procedures Act, of the assignment, sale,

or transfer of the servicing of all relevant loans that the licensee is currently servicing under the license being surrendered.

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this subsection; provided that if a mortgage servicer is required to assign, sell, or transfer the servicing of any loans, the voluntary surrender of the mortgage servicer's license shall be effective upon the effective date of the assignment, sale, or transfer of the servicing of all loans."

SECTION 10. Section 454M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Safeguard and account for any money handled for the borrower;
- (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (3) Disclose to the commissioner in the servicer's license application and each yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities; [and]
- (4) File ~~[with the commissioner upon request]~~ a report with each yearly renewal statement in a form and format acceptable to the director detailing the servicer's activities in this State, including:
 - (A) The number of mortgage loans the servicer is servicing;
 - (B) The type and characteristics of ~~[such]~~ loans serviced in this State;
 - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;
 - (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
 - (E) Information on foreclosures commenced in this State; ~~[and]~~
 - (F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its affiliations; and
 - ~~[(F)]~~ (G) Any other information that the commissioner may require[-]; and
- (5) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer's business constitutes at least a twenty per cent share of the portion of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall prohibit a mortgagee as defined by section 667-21 or a mortgage servicer from contracting with a licensee that maintains an office in this State in conformity with this section for the purposes of addressing consumer inquiries or complaints and accepting service of process."

SECTION 11. Section 454M-10, Hawaii Revised Statutes, is amended to read as follows:

“~~§454M-10~~ Penalty. Any person who violates any provision of this chapter may be subject to an administrative fine of at least \$1,000 and not more than ~~[\$5,000] \$7,000~~ for each violation[-]; provided that \$1,000 of the fine shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-P.”

SECTION 12. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

“§501-151 Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter “judgment” includes an order or decree having the effect of a judgment.

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

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

Foreclosure notice as provided in section 667-Q may be recorded.

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

SECTION 13. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

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

SECTION 14. Section 514B-146, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

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

SECTION 15. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

SCHEDULE

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

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

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

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

“**§667-5 Foreclosure under power of sale; notice; affidavit after sale[-]; deficiency judgments.** (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee’s successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale

upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

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

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

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

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

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

- (2) Give notice of the mortgagor's right to elect to participate in the mortgage foreclosure dispute resolution program pursuant to section 667-E or to convert the nonjudicial power of sale foreclosure to a judicial foreclosure pursuant to section 667-U; and

- (2)] (3) Give any notices and do all acts as ~~are~~ authorized or required by the power contained in the mortgage.

- (b) Copies of the notice required under subsection (a) shall be:

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

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

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

- (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and

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

- (d) Any sale, of which notice has been given ~~as aforesaid,~~ pursuant to subsections (a) and (b) may be postponed from time to time by public announcement made by the mortgagee or by ~~some~~ a person acting on the mortgagee's

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

(e) The mortgagee or other person, excluding an association, who completes the nonjudicial foreclosure of a mortgage or other lien on residential property pursuant to this part shall not be entitled to pursue or obtain a deficiency judgment against an owner-occupant of the residential property who, at the time the notice of intent to foreclose is served, does not have a fee simple or leasehold ownership interest in any other real property.

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

[(e) The] (f) Subject to the requirements of part , the affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

[(f)] (g) This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 18. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

"§667-5.5 Foreclosure notice[-]; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by ~~way of~~ registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located[;] of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment ~~[which] that~~ is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply ~~[when] if~~ the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation."

SECTION 19. Section 667-10, Hawaii Revised Statutes, is amended to read as follows:

"§667-10 Power unaffected by transfer; surplus after sale. No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor, except as otherwise provided by chapters 501 and 502. When public sale is made of the mortgaged property under this ~~[chapter,]~~ part, the remainder of the proceeds, if any, shall be paid over

to the owner of the mortgaged property, after deducting the amount of claim and all expenses attending the same.”

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

“(b) As used in this part:

“Approved budget and credit counselor” means a budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to Title 11 United States Code, Section 111.

“Approved housing counselor” means a housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services pursuant to Section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code, Section 1701x.

“Association” has the same meaning as the term is defined in section 514B-3.

“Borrower” means the borrower, maker, cosigner, or guarantor under a mortgage agreement.

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

Unless the context clearly indicates otherwise, as used in this part, a “foreclosing mortgagee” shall encompass all of the following entities:

- (1) The foreclosing mortgagee;
- (2) Any person that has an ownership interest in the promissory note on the mortgage agreement or a security interest represented by the mortgage for the subject property;
- (3) Any mortgage servicer, who services the mortgage loan of the mortgagor; and
- (4) The agents, employees, trustees, and representatives of a lender, the foreclosing mortgagee, a mortgagee, and a mortgage servicer.

“Mailed” means to be sent by regular mail, postage prepaid, and by certified, registered, or express mail, postage prepaid and return receipt requested.

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

“Mortgage agreement” includes the mortgage, the note or debt document, or any document amending any of the foregoing.

“Mortgaged property” means the property that is subject to the lien of the mortgage.

“Mortgagee” means the current holder of record of the mortgagee’s or the lender’s interest under the mortgage, or the current mortgagee’s or lender’s duly authorized agent.

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

“Nonjudicial foreclosure” means foreclosure under power of sale.

“Open house” means a public showing of the mortgaged property during a scheduled time period.

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

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person’s primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

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

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

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

“Residential property” means real property that is improved and used for residential purposes.

“Served” means to have service of the notice of default and intention to foreclose made in accordance with the service of process or the service of summons under the Hawaii rules of civil procedure, and under sections 634-35 and 634-36.”

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

“§667-22 Notice of default[;] and intention to foreclose; contents; distribution. (a) When the mortgagor or the borrower has breached the mortgage agreement, and when the foreclosing mortgagee intends to conduct a power of sale foreclosure under this part, the foreclosing mortgagee shall prepare a written notice of default and intention to foreclose addressed to the mortgagor, the borrower, and any guarantor. The notice of default and intention to foreclose shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of [~~the mortgagor, the borrower,~~] all mortgagors, borrowers, and any [guarantor;] guarantors;
- (3) The address or a description of the location of the mortgaged property, [~~and~~] the tax map key number, and the certificate of title or transfer certificate of title number if within the jurisdiction of the land court, of the mortgaged property;
- (4) The description of the default[~~, and~~] or, if the default is a monetary default, an itemization of the delinquent amount [~~shall be given~~];
- (5) The action [~~that must be taken~~] required to cure the default[~~;~~] including the delinquent amount [~~to cure the default, together with~~] and the estimated amount of the foreclosing mortgagee’s attorney’s fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing mortgagee [~~related to the default~~] by the deadline date;

- (6) The date by which the default must be cured, which ~~[deadline date]~~ shall be at least sixty days after the date of the notice of default~~[:]~~ and intention to foreclose;
- (7) ~~[That]~~ A statement that if the default is not cured by the deadline date stated in the notice of default~~[:]~~ and intention to foreclose, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will ~~[be]~~ become due, that the mortgagee intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any court action and without going to court, and that the mortgagee or any other person may acquire the mortgaged property at the public sale; ~~[and]~~
- (8) The name, address, ~~[including]~~ electronic address, and telephone number of the attorney who is representing the foreclosing mortgagee; provided that the attorney shall be licensed to practice law in the State and physically located in the State~~[-:];~~ and
- (9) Notice of the right of the owner-occupant to elect to participate in any other process as established by law.
- (b) The notice of default and intention to foreclose shall also contain wording substantially similar to the following in all capital letters~~[-:]~~ and printed in not less than fourteen-point font:

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

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

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

THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED.

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

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

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

of: (c) The notice of default and intention to foreclose shall include a copy

- (1) The original mortgage agreement, and copies of any subsequent mortgage agreements and assignments;
- (2) The promissory note signed by the mortgagor and any endorsements and allonges on the note; and
- (3) Any other documents that amend or alter the terms of the original mortgage agreement that were signed by the mortgagor and the mortgagee or any successors or assigns of the mortgagor or the mortgagee.

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

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

- (1) The mortgagor and the borrower[;] in the same manner as service of a civil complaint under chapter 634 or the Hawaii rules of civil procedure, as they may be amended from time to time;
- (2) Any prior or junior creditors [having] who have a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (3) The state director of taxation;
- (4) The director of finance of the county where the mortgaged property is located; [and]
- (5) The department of commerce and consumer affairs, by filing the notice with the department when required; and
- [(5)] (6) Any other person entitled to receive notice under [section 667-5.5.] this part.

(f) As used in this part, unless the context clearly indicates otherwise, the notice of default and intention to foreclose shall also include any amended notice that results from participation in the mortgage foreclosure dispute resolution program under part ."

SECTION 22. Section 667-23, Hawaii Revised Statutes, is amended to read as follows:

"[H]§667-23[H] Recordation of notice of default[;] and intention to foreclose. Before the deadline date in the notice of default[;] and intention to foreclose, the notice ~~[of default]~~ shall be recorded in a recordable form ~~[shall be recorded]~~ in a manner similar to recordation of notices of pendency of action under section 501-151 or section 634-51, or both, as applicable. The recorded notice of default and intention to foreclose shall have the same effect as a notice of pendency of action. From and after the recordation of the notice of default[;] and intention to foreclose, any person who becomes a purchaser or encumbrancer of the mort-

gaged property shall be deemed to have constructive notice of the power of sale foreclosure and shall be bound by the foreclosure.”

SECTION 23. Section 667-24, Hawaii Revised Statutes, is amended to read as follows:

“[§667-24] Cure of default. (a) If the default is cured as required by the notice of default[;] and intention to foreclose, or if the parties have reached a settlement document, the foreclosing mortgagee shall rescind the notice of default[;] and intention to foreclose. Within fourteen days of the date of the cure[;] or a settlement document reached by the parties, the foreclosing mortgagee shall so notify any person who was served with the notice of default[;] and intention to foreclose. If the notice of default and intention to foreclose was recorded, a release of the notice of default and intention to foreclose shall be recorded.

(b) If the default is not cured as required by the notice of default[;] and intention to foreclose, the parties have not reached a settlement document pursuant to part and no report of noncompliance has been issued against the mortgagee under section 667-L, and the mortgagor has not elected to convert the foreclosure to a judicial action, the foreclosing mortgagee, without filing a court action and without going to court, may foreclose the mortgage under power of sale to sell the mortgaged property at a public sale.”

SECTION 24. Section 667-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The public sale of the mortgaged property shall be held only in the county where the mortgaged property is located[; ~~However, if the borrower, the mortgagor, and the foreclosing mortgagee all agree in writing, the public sale may be held in a different county in the State;~~]; provided that the public sale shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of mortgaged property located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of mortgaged property located in the eastern portion of the county of Hawaii;
- (3) At a state facility in Kailua-Kona, for a public sale of mortgaged property located in the western portion of the county of Hawaii;
- (4) At a state facility in the county seat of Maui, for a public sale of mortgaged property located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of mortgaged property located in the county of Kauai;

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

SECTION 25. Section 667-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If the default is not cured as stated in the notice of default[;] and intention to foreclose, the foreclosing mortgagee shall conduct two open houses of the mortgaged property before the public sale; provided that the foreclosing mortgagee timely received the signed letter of agreement from the mortgagor as required by the notice of default[;] and intention to foreclose. Only two open houses shall be required even if the date of the public sale is postponed.”

SECTION 26. Section 667-27, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
 “(a) The foreclosing mortgagee shall prepare the public notice of the public sale. The public notice shall state:
 - (1) The date, time, and place of the public sale;
 - (2) The dates and times of the two open houses of the mortgaged property, or if there will not [tø] be any open houses, the public notice shall so state;
 - (3) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
 - (4) A description of the mortgaged property, including the address [~~or description of the location of the mortgaged property;~~] and the tax map key number of the mortgaged property;
 - (5) The name of the mortgagor and the borrower;
 - (6) The name of the foreclosing mortgagee;
 - (7) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
 - (8) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; [~~and~~]
 - (9) The terms and conditions of the public sale[-]; and
 - (10) An estimate of the opening bid.”
2. By amending subsections (c) and (d) to read:
 “(c) If the default is not cured as required by the notice of default[~~;~~] and intention to foreclose, the foreclosing mortgagee shall have a copy of the public notice of the public sale of the mortgaged property:
 - (1) Mailed or delivered to the mortgagor and the borrower at their respective last known addresses;
 - (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
 - (3) Mailed or delivered to the state director of taxation;
 - (4) Mailed or delivered to the director of finance of the county where the mortgaged property is located;
 - (5) Posted on the mortgaged property or on such other real property of which the mortgaged property is a part; and
 - (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5[-] or 667-S.
- (d) The foreclosing mortgagee shall have the public notice of the public sale printed in not less than seven-point font and published in the classified section of a daily newspaper [øf] having the largest general circulation specifically in the county where the mortgaged property is located[-]; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest general circulation specifically in the western or eastern half of the county, as the case may be, in which the property is located. The public notice shall be published once each week for three consecutive weeks [~~(f, constituting three publications)~~]. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement.”

SECTION 27. Section 667-28, Hawaii Revised Statutes, is amended to read as follows:

“§667-28 Postponement, cancellation of sale. (a) The public sale may be either postponed or canceled by the foreclosing mortgagee. Notice of the postponement or the cancellation of the public sale shall be:

- (1) ~~Announced]~~ announced by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale; ~~and~~
- (2) ~~Provided, upon request, to any other person who is entitled to receive the notice of default under section 667-22(c)].~~

(b) If there is a postponement of the public sale of the mortgaged property, a new public notice of the public sale shall be published once in the format described in section 667-27. The new public notice shall state that it is a notice of a postponed sale. The public sale shall take place no sooner than fourteen days after the date of the publication of the new public notice. ~~[No sooner]~~ Not less than fourteen days before the date of the public sale, a copy of the new public notice shall be posted on the mortgaged property or on [such other] another real property of which the mortgaged property is a part, and it shall be mailed or delivered to the mortgagor, to the borrower, and to any other person entitled to receive notice under section [667-27.] 667-22(e).

(c) Upon the fourth postponement of every series of four consecutive postponements, the foreclosing mortgagee shall follow all of the public notice of public sale requirements of section 667-27, including the requirements of mailing and posting under section 667-27(c) and of publication under section 667-27(d).

~~[(e)]~~ (d) The default under the mortgage agreement may be cured no later than three business days before the date of the public sale of the mortgaged property by paying the entire amount which would be owed to the foreclosing mortgagee if the payments under the mortgage agreement had not been accelerated, plus the foreclosing mortgagee's attorney's fees and costs, and all other fees and costs incurred by the foreclosing mortgagee related to the default, unless otherwise agreed to between the foreclosing mortgagee and the borrower. There is no right to cure the default or any right of redemption after that time. If the default is so cured, the public sale shall be canceled.”

SECTION 28. Section 667-29, Hawaii Revised Statutes, is amended to read as follows:

“[§667-29] Authorized bidder; successful bidder. Any person, including the foreclosing mortgagee, shall be authorized to bid for the mortgaged property at the public sale and to purchase the mortgaged property. The highest bidder who meets the requirements of the terms and conditions of the public sale shall be the successful bidder. The public sale shall be considered as being held when the mortgaged property is declared by the foreclosing mortgagee as being sold to the successful bidder. When the public sale is held, the successful bidder at the public sale, as the purchaser, shall make a nonrefundable downpayment to the foreclosing mortgagee of not less than ten per cent of the highest successful bid price. If the successful bidder is the foreclosing mortgagee or any other mortgagee having a recorded lien on the mortgaged property before the recording of the notice of default and intention to foreclose under section 667-23, the downpayment requirement may be satisfied by offset and a credit bid up to the amount of the mortgage debt.”

SECTION 29. Section 667-31, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) After the purchaser completes the purchase by paying the full purchase price and the costs for the purchase, the mortgaged property shall be con-

veyed to the purchaser by a conveyance document. The conveyance document shall be in a recordable form and shall be signed by the foreclosing mortgagee in the foreclosing mortgagee's name. The mortgagor or borrower shall not be required to sign the conveyance document [on his or her own behalf].

(b) From the sale proceeds, after paying all liens and encumbrances in the order of priority as a matter of law, after paying the foreclosing mortgagee's attorney's fees and costs, after paying the fees and costs of the power of sale foreclosure, and after paying the moneys owed to the foreclosing mortgagee, the balance of the sale proceeds shall be distributed by the foreclosing mortgagee to junior creditors having valid liens on the mortgaged property in the order of their priority and not pro rata. Any remaining surplus after payment in full of all valid lien creditors shall be distributed to the mortgagor."

SECTION 30. Section 667-32, Hawaii Revised Statutes, is amended to read as follows:

"[H]§667-32[H] Affidavit after public sale; contents. (a) After the public sale is held, the foreclosing mortgagee shall sign an affidavit under penalty of perjury:

- (1) Stating that the power of sale foreclosure was made pursuant to the power of sale provision in the mortgage;
- (2) Stating that the power of sale foreclosure was conducted as required by this part;
- (3) Summarizing what was done by the foreclosing mortgagee;
- (4) Attaching a copy of the recorded notice of default[;] and intention to foreclose;
- (5) Attaching a copy of the last public notice of the public sale[-];
- (6) Referencing the document number of the affiliate statement filed at the bureau of conveyances as required under section 667-AA; and
- (7) Stating the date of filing and any relevant referencing information assigned by the division of financial institutions to the statement filed with the commissioner of financial institutions of the mortgage servicer affiliate statement as required under section 454M-5(a)(4)(F).

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

- "(1) I am duly authorized to represent or act on behalf of _____ (name of mortgagee) ("foreclosing mortgagee") regarding the following power of sale foreclosure. I am signing this affidavit in accordance with the alternate power of sale foreclosure law (Chapter 667, Part II, Hawaii Revised Statutes);
- (2) The foreclosing mortgagee is a "foreclosing mortgagee" as defined in the power of sale foreclosure law;
- (3) The power of sale foreclosure is of a mortgage made by _____ (name of mortgagor) ("mortgagor"), dated _____, and recorded in the _____ (bureau of conveyances or office of the assistant registrar of the land court) as _____ (recording information). The mortgaged property is located at: _____ (address or description of location) and is identified by tax map key number: _____. The legal description of the mortgaged property is attached as Exhibit "A". The name of the borrower, if different from the mortgagor, is _____ ("borrower");

- (4) Pursuant to the power of sale provision of the mortgage, the power of sale foreclosure was conducted as required by the power of sale foreclosure law. The following is a summary of what was done:
- (A) A notice of default and intention to foreclose was served on the mortgagor, the borrower, and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the following manner: _____;
 - (B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the notice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the notice;
 - (C) The notice of default and intention to foreclose was recorded before the deadline date in the _____ (bureau of conveyances or office of the assistant registrar of the land court). The notice was recorded on _____ (date) as document no. _____. A copy of the recorded notice is attached as Exhibit "1";
 - (D) The default was not cured by the deadline date in the notice of default[;] and intention to foreclose;
 - (E) A public notice of the public sale was initially published in the classified section of the _____, a daily newspaper of general circulation in the county where the mortgaged property is located, once each week for three consecutive weeks on the following dates: _____. A copy of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days before the date of the public sale;
 - (F) The public notice of the public sale was sent to the mortgagor, to the borrower, to the state director of taxation, to the director of finance of the county where the mortgaged property is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default[;] and intention to foreclose, and those dates were at least sixty days before the date of the public sale;
 - (G) The public notice of the public sale was posted on the mortgaged property or on such other real property of which the mortgaged property is a part on _____ (date). That date was at least sixty days before the date of the public sale;
 - (H) Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooperate);
 - (I) A public sale of the mortgaged property was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of \$_____; and
 - (J) At the time the public sale was held, the default was not cured and there was no circuit court foreclosure action pending in the circuit where the mortgaged property is located; and

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

SECTION 31. Section 667-37, Hawaii Revised Statutes, is amended to read as follows:

“[H§667-37] Judicial action of foreclosure before public sale. This part shall not prohibit the borrower, the foreclosing mortgagee, or any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-23, from filing an action for the judicial foreclosure of the mortgaged property in the circuit court of the circuit where the mortgaged property is located[; ~~provided that the action is filed before the public sale is held. While that circuit court foreclosure action is pending, the power of sale foreclosure process shall be stayed.~~”

SECTION 32. Section 667-39, Hawaii Revised Statutes, is amended to read as follows:

“[H§667-39] Right to enforce this part. (a) The foreclosing mortgagee, any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23, the borrower, and the mortgagor, may enforce this part by bringing an action in the circuit court of the circuit where the mortgaged property is located.

(b) The remedies provided in this part are cumulative and shall not abridge the right of a party to bring an action under any other law, including sections 454M-9 and 480-2.”

SECTION 33. Section 667-41, Hawaii Revised Statutes, is amended to read as follows:

“[H§667-41] Public information requirement. ~~[A] Beginning on September 1, 2011,~~ all financial institutions, mortgagees, lenders, business entities and organizations without limitation, and persons, who intend to use the power of sale foreclosure under this part, under the conditions required by this part, shall also develop informational materials to educate and inform borrowers and mortgagors. These materials shall be made available to the public[;] and provided to the mortgagors of all mortgage agreements entered into, including the borrowers at the time of application for a mortgage or loan, or other contract containing a power of sale foreclosure provision. These materials, among other things, shall inform the borrower that the financial institution and other business entities and persons who are authorized under this part to exercise the power of sale foreclosure, in the event of the borrower’s default, have the option of pursuing either a judicial or nonjudicial foreclosure as provided by law. These informational materials shall fully and completely explain these remedies[;] in simple and understandable terms.”

SECTION 34. Section 667-34, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 667-35, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 667-42, Hawaii Revised Statutes, is repealed.

SECTION 37. On the effective date of this Act, there shall be a phase-in period ending on August 15, 2011, in which any owner-occupant, as defined under section 667-21(b), Hawaii Revised Statutes, who is undergoing a nonjudicial

foreclosure for which the mortgagee's affidavit has not yet been filed pursuant to sections 667-5 or 667-33, Hawaii Revised Statutes, may elect to convert to a judicial foreclosure under section 5 of this Act. An owner-occupant who elects to convert a nonjudicial foreclosure to a judicial foreclosure during the phase-in period:

- (1) Shall submit with the petition and filing fee as required under sections 667-U and 667-V, Hawaii Revised Statutes, copies of any foreclosure notices received from the mortgagee and published notices of the public sale made pursuant to section 667-5 or 667-27, Hawaii Revised Statutes;
- (2) Shall not be subject to the deadline described in section 667-U(a)(2), Hawaii Revised Statutes; and
- (3) Shall submit a filing fee of \$300, in lieu of the \$525 filing fee required under section 667-U(a)(6), Hawaii Revised Statutes;

provided further that the requirements of section 667-W, Hawaii Revised Statutes, shall not be applicable to the foreclosing mortgagee.

SECTION 38. There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$400,000, or so much thereof as may be necessary for fiscal year 2011-2012, to be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, as seed capital; provided that upon receipt of sufficient moneys to accomplish its purpose, the mortgage foreclosure dispute resolution special fund shall reimburse the compliance resolution fund for the appropriation made pursuant to this Act.

SECTION 39. There is appropriated out of the mortgage foreclosure dispute resolution special fund, established under section 667-P, Hawaii Revised Statutes, the sum of \$1,850,000, or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 for all expenses of the mortgage foreclosure dispute resolution program, including the hiring of one full-time program specialist exempt from chapter 76, Hawaii Revised Statutes, and one full-time office assistant exempt from chapter 76, Hawaii Revised Statutes, in the division of administrative hearings, department of commerce and consumer affairs, to carry out the purposes of this Act, and for the reimbursement of the compliance resolution fund of the amount appropriated as seed capital to the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 40. There shall be a moratorium on all new nonjudicial foreclosure actions under part I of chapter 667, Hawaii Revised Statutes, for property located in this State to begin on the effective date of this Act and to end on July 1, 2012. No foreclosure by power of sale pursuant to section 667-5, Hawaii Revised Statutes, shall be initiated and the registrar of the bureau of conveyances shall not record an affidavit or notice of sale pursuant to section 667-5, Hawaii Revised Statutes, for a power of sale foreclosure under section 667-5, Hawaii Revised Statutes, initiated during the moratorium period established by this Act.

SECTION 41. The department of commerce and consumer affairs shall submit a report to the legislature no later than twenty days before the conven-

ing of the regular sessions of 2012 and 2013 on the operations and outcomes of the mortgage foreclosure dispute resolution program established by section 1 of this Act, including recommendations for further legislation if necessary for the efficient operation of the program.

SECTION 42. In codifying the new sections added by sections 1, 3, 4, 5, and 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 43. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 44. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes.

(Approved May 5, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.