



GOV. MSG. NO. 1150

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 5, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 5, 2011, the following bill was signed into law:

SB651 SD2 HD2 CD1

RELATING TO MORTGAGE FORECLOSURES
ACT 048 (11)

Sincerely,

A handwritten signature in black ink that reads "Neil Abercrombie".

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

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

4 "PART . MORTGAGE FORECLOSURE DISPUTE RESOLUTION

5 §667-A Applicability. (a) This part shall apply to
6 nonjudicial foreclosures conducted by power of sale under parts
7 I and II, of residential real property that is occupied by one
8 or more mortgagors who are owner-occupants.

9 (b) This part shall not apply to actions by an association
10 to foreclose on a lien for amounts owed to the association that
11 arise under a declaration filed pursuant to chapter 514A or
12 514B, or to a mortgagor who has previously participated in
13 dispute resolution under this part for the same property on the
14 same mortgage loan.

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



1 §667-B Definitions. As used in this part:

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

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

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

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

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

19 "Dispute resolution" means a facilitated negotiation
20 between a mortgagor and mortgagee for the purpose of reaching an
21 agreement for mortgage loan modification or other agreement in



1 an attempt to avoid foreclosure or to mitigate damages if
2 foreclosure is unavoidable.

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

5 "Mortgagor" has the same meaning as the term is defined in
6 section 667-21.

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

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

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

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

20 §667-C Mortgage foreclosure dispute resolution program;
21 administration. (a) There is established in the department a



1 mortgage foreclosure dispute resolution program to provide an
2 owner-occupant an opportunity to negotiate an agreement that
3 avoids foreclosure or mitigates damages in cases where
4 foreclosure is unavoidable.

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

8 (1) Contract procurement;

9 (2) Performance oversight, such as monitoring compliance
10 with the program requirements; and

11 (3) Management services to oversee any contract between
12 the department and a private organization retained by
13 the department to provide dispute resolution services
14 or personnel, including providing the department with
15 monthly status reports and evaluations.

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

20 (c) The department is authorized to contract with county,
21 state, or federal agencies, and with private organizations for



1 the performance of any of the functions of this part. These
2 contracts shall not be subject to chapter 103D or 103F.

3 **§667-D Availability of dispute resolution required before**
4 **foreclosure.** Before a public sale may be conducted pursuant to
5 section 667-5 or 667-25 for a residential property that is
6 occupied by an owner-occupant as a primary residence, the
7 foreclosing mortgagee shall, at the election of the owner-
8 occupant, participate in the mortgage foreclosure dispute
9 resolution program under this part to attempt to negotiate an
10 agreement that avoids foreclosure or mitigates damages in cases
11 where foreclosure is unavoidable.

12 **§667-E Notice of dispute resolution availability required.**

13 (a) A foreclosure notice served pursuant to section 667-5 or
14 667-22(e) shall include notice that the mortgagee is required,
15 at the election of an owner-occupant, to participate in the
16 mortgage foreclosure dispute resolution program pursuant to this
17 part to attempt to avoid foreclosure or to mitigate damages
18 where foreclosure is unavoidable.

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



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



1 occupant of the subject property, including supporting
2 documentation;

3 (8) A general description of the information that an
4 owner-occupant electing to participate in the mortgage
5 foreclosure dispute resolution program is required to
6 provide to participate in the program as described
7 under section 667-J(c) (2);

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

13 **§667-F Mortgagee's filing of notice with department;**
14 **filing fee.** (a) Within three days after a mortgagee serves a
15 foreclosure notice on an owner-occupant pursuant to section
16 667-5 or 667-22, the mortgagee shall file the foreclosure notice
17 with the department and pay a filing fee of \$250, which shall be
18 deposited into the mortgage foreclosure dispute resolution
19 special fund established under section 667-P.

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



1 §667-G Notification to mortgagor by department. Within
2 ten days after the mortgagee's filing of a notice of default and
3 intention to foreclose with the department, the department shall
4 mail a written notification by registered or certified mail to
5 the mortgagor that a notice of default and intention to
6 foreclose has been filed with the department. The notification
7 shall inform the mortgagor of an owner-occupant's right to elect
8 to participate in the foreclosure dispute resolution program and
9 shall include:

- 10 (1) Information about the mortgage foreclosure dispute
11 resolution program;
- 12 (2) A form for an owner-occupant to elect or to waive
13 participation in the mortgage foreclosure dispute
14 resolution program pursuant to this part that shall
15 contain instructions for the completion and return of
16 the form to the department and the department's
17 mailing address;
- 18 (3) A statement that the mortgagor electing to participate
19 in the mortgage foreclosure dispute resolution program
20 shall provide a certification under penalty of perjury
21 to the department that the mortgagor is an owner-



1 occupant of the subject property, including a
2 description of acceptable supporting documentation as
3 required by section 667-H(a) (2);

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

11 (5) A description of the information required under
12 section 667-J(c) (2) that the owner-occupant shall
13 provide to the mortgagee and the neutral assigned to
14 the dispute resolution;

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

19 (7) Contact information for all local approved housing
20 counselors;



1 (8) Contact information for all local approved budget and
2 credit counselors; and

3 (9) Contact information for the department.

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

8 §667-H Owner-occupant's election of dispute resolution;
9 owner-occupant program fee; right to dispute resolution waived.

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

13 (1) The completed program election form provided pursuant
14 to section 667-G(2);

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

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



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

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

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

17 §667-I Notification of opening a dispute resolution case;
18 mortgagee's program fee. (a) If an owner-occupant elects to
19 participate in the mortgage foreclosure dispute resolution
20 program, the department shall open a dispute resolution case.
21 Within twenty days of receipt of the owner-occupant's election



1 form and fee in accordance with section 667-H, the department
2 shall mail written notification of the case opening to the
3 parties by registered mail, return receipt requested, which
4 shall include:

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

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

15 (b) Within fourteen days of the date of the mailing of the
16 written notification, the mortgagee shall pay a program fee of
17 \$300 to the department.

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



1 §667-J Parties; requirements; process. (a) The parties
2 to a dispute resolution process conducted under this part shall
3 consist of the owner-occupant or the owner-occupant's
4 representative, and the mortgagee or the mortgagee's
5 representative; provided that:

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

14 (2) The mortgagee and owner-occupant may be represented by
15 counsel; and

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

19 (b) No fewer than thirty days prior to the first day of a
20 scheduled dispute resolution session pursuant to this part, the



1 owner-occupant shall consult with an approved housing counselor
2 or approved budget and credit counselor.

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

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

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

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

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

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



- 1 (A) Documentation showing income qualification for a
- 2 loan modification, including any copies of pay
- 3 stubs, W-2 forms, social security or disability
- 4 income, retirement income, child support income,
- 5 or any other income that the owner-occupant deems
- 6 relevant to the owner-occupant's financial
- 7 ability to repay the mortgage;
- 8 (B) Any records or correspondence available which may
- 9 dispute that the mortgage loan is in default;
- 10 (C) Any records or correspondence available
- 11 evidencing a loan modification or amendment;
- 12 (D) Any records or correspondence available that
- 13 indicate the parties are currently engaged in
- 14 bona fide negotiations to modify the loan or
- 15 negotiate a settlement of the delinquency;
- 16 (E) Names and contact information for housing
- 17 counselors, approved budget and credit
- 18 counselors, or representatives of the mortgagee,
- 19 with whom the owner-occupant may have or is
- 20 currently working with to address the
- 21 delinquency; and



1 (F) Verification of counseling by an approved housing
2 counselor or approved budget and credit
3 counselor.

4 (d) The dispute resolution session shall consist of at
5 least one meeting lasting no more than three hours, which may be
6 extended by the equivalent of one additional three-hour session
7 on the same or a different day at the neutral's discretion.

8 The parties shall be present in person at the dispute
9 resolution session; provided that a party may submit a written
10 request to the department at least fourteen days prior to the
11 scheduled dispute resolution session to participate through
12 telephone, videoconference, or other contemporaneous
13 telecommunications medium. A request to participate through a
14 telecommunications medium shall be granted only for good cause
15 and upon agreement of the neutral and the other party to the
16 dispute resolution. For purposes of this subsection, "good
17 cause" means an event or circumstance outside of the requesting
18 party's control that makes in-person participation impossible.
19 The neutral shall have the discretion to postpone a dispute
20 resolution session in order to allow the requesting party to
21 participate in person; provided that postponement shall not



1 delay the dispute resolution process beyond timelines
2 established by this part.

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

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

17 §667-K Outcome of dispute resolution; neutral's closing
18 report. (a) Within ten days from the conclusion of the dispute
19 resolution, the neutral shall file a closing report with the
20 department, which verifies the parties' presence at the session,
21 compliance with the requirements of this part, and reports



1 whether the parties reached an agreement to resolve the dispute
2 and the date of the dispute resolution's conclusion. Upon
3 receipt of the neutral's closing report, the department shall
4 close the case. The department shall forward a written copy of
5 the neutral's closing report by registered or certified mail to
6 the parties within five days after receipt from the neutral.

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



1 that the parties were unable to reach an agreement and file a
2 report.

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



1 appropriate jurisdiction in the event of breach by either party.
2 If the settlement document allows for foreclosure or other
3 transfer of the subject property, the stay of the foreclosure
4 under section 667-M shall be released upon filing or recording
5 the settlement document with the land court or bureau of
6 conveyances, as appropriate. Thereafter, the land court or
7 bureau of conveyances may record a notice of sale or other
8 conveyance document, as appropriate.

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



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

9 §667-L Noncompliance with requirements; statement. (a)

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

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

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

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



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

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

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

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

9 (B) Refusal to cooperate or participate in dispute
10 resolution.

11 (b) If the neutral determines that the noncompliance was
12 unjustified as a result of circumstances within a party's
13 control, sanctions may be imposed on the noncompliant party as
14 follows:

15 (1) Sanctions against a mortgagee for unjustified
16 noncompliance with the program shall include a stay of
17 the foreclosure under section 667-M and a fine payable
18 to the owner-occupant not to exceed \$1,500; or

19 (2) Sanctions against an owner-occupant for unjustified
20 noncompliance with the program shall include a removal
21 of the stay of the foreclosure pursuant to section



1 667-M(b) and a fine payable to the mortgagee not to
2 exceed \$1,500.

3 **§667-M Stay of nonjudicial foreclosure proceedings.** (a)

4 The written notification of a case opening under section 667-I
5 shall operate as a stay of the foreclosure proceeding, and may
6 be filed or recorded, as appropriate, at the land court or
7 bureau of conveyances.

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

10 (1) Until the neutral's report confirming either that the
11 parties have been unable to reach an agreement under
12 section 667-K(b) or the parties have reached an
13 agreement that authorizes foreclosure under section
14 667-K (c) or (d) is filed with the department;

15 (2) If a statement of noncompliance has been issued
16 against the mortgagee pursuant to section 667-L; or

17 (3) Unless otherwise provided by law or court order.

18 **§667-N Confidentiality.** Personal financial information
19 and other sensitive personal information, including information
20 describing an individual's finances, income, assets,
21 liabilities, net worth, bank balances, financial history or



1 activities, or credit worthiness which is disclosed by the
2 parties in the course of the mortgage foreclosure dispute
3 resolution program, shall be confidential and not subject to
4 public disclosure under chapter 92F or any other state law.

5 §667-O Neutral qualifications; status and liability. A
6 neutral shall possess sufficient knowledge in the areas of law,
7 real estate, or finance and shall receive sufficient training to
8 be able to effectuate the purposes of this part.

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

17 §667-P Mortgage foreclosure dispute resolution special
18 fund. (a) There is established in the state treasury a special
19 fund to be known as the mortgage foreclosure dispute resolution
20 special fund to be administered by the department to implement
21 and operate the mortgage foreclosure dispute resolution program



1 established by this part. Moneys collected as fees or fines
2 under sections 454M-10, 667-F, 667-H, 667-I, and 667-U, for the
3 mortgage dispute resolution program and contributions from the
4 sources identified under subsection (b) shall be deposited in
5 the fund. Interest earned from the balance of the fund shall
6 become a part of the fund.

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

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

17 "§454M- Unlicensed foreclosure actions voided. Any
18 action taken in connection with a mortgage foreclosure under
19 chapter 667 by a nonexempt person who engages in the business of
20 mortgage servicing without a license as provided in this chapter
21 shall be void for purposes of chapter 667."



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

4 §667-Q Recordation of foreclosure notice. The foreclosing
5 mortgagee may record a copy of the foreclosure notice with the
6 assistant registrar of the land court or the bureau of
7 conveyances, as appropriate, in a manner similar to recordation
8 of notices of pendency of action under section 501-151 or
9 section 634-51, as applicable. The recorded notice shall have
10 the same effect as a notice of pendency of action. From and
11 after the recordation of the notice, any person who becomes a
12 purchaser or encumbrancer of the mortgaged property shall be
13 deemed to have constructive notice of the power of sale
14 foreclosure and shall be bound by the foreclosure.

15 §667-R Location of public sale following power of sale
16 foreclosure. The public sale of the mortgaged property shall be
17 held only on grounds or at facilities under the administration
18 of the State, as follows:

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



- 1 (2) At a state facility in Hilo, for a public sale of
- 2 mortgaged property located in the eastern portion of
- 3 the county of Hawaii;
- 4 (3) At a state facility in Kailua-Kona, for a public sale
- 5 of mortgaged property located in the western portion
- 6 of the county of Hawaii;
- 7 (4) At a state facility in the county seat of Maui, for a
- 8 public sale of mortgaged property located in the
- 9 county of Maui; and
- 10 (5) At a state facility in the county seat of Kauai, for a
- 11 public sale of mortgaged property located in the
- 12 county of Kauai;
- 13 as designated by the department of accounting and general
- 14 services; provided that no public sale shall be held on grounds
- 15 or at facilities under the administration of the judiciary. The
- 16 public sale shall be held during business hours on a business
- 17 day."

18 SECTION 4. Chapter 667, Hawaii Revised Statutes, is

19 amended by adding two new sections to part II to be

20 appropriately designated and to read as follows:



1 "§667-S Foreclosure notice; planned communities;
2 condominiums; cooperative housing projects. Notwithstanding any
3 law or agreement to the contrary, any person who forecloses on a
4 property under this part within a planned community, a
5 condominium apartment or unit, or an apartment in a cooperative
6 housing project shall notify, by way of registered or certified
7 mail, the board of directors of the planned community
8 association, the association of owners of the condominium
9 project, or the cooperative housing project in which the
10 property to be foreclosed is located, of the foreclosure at the
11 time foreclosure proceedings are begun. The notice, at a
12 minimum, shall identify the property, condominium apartment or
13 unit, or cooperative apartment that is the subject of the
14 foreclosure and identify the name or names of the person or
15 persons bringing foreclosure proceedings. This section shall
16 not apply when the planned community association, condominium
17 association of owners, or cooperative housing corporation is a
18 party in a foreclosure action. This section shall not affect
19 civil proceedings against parties other than the planned
20 community association, association of owners, or cooperative
21 housing corporation.



1 §667-T Foreclosure of association lien; cure of default.

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

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



1 "§667-U Conversion to judicial foreclosure; residential
2 property; conditions. (a) An owner-occupant of a residential
3 property that is subject to nonjudicial foreclosure under part I
4 or II may convert the action to a judicial foreclosure provided
5 that:

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

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



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

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

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

19 (5) All parties joined in the converted judicial
20 proceeding may assert therein any claims and defenses
21 that they could have asserted had the action



1 originally been commenced as a judicial foreclosure
2 action; and

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

11 (b) This section shall not apply to foreclosures of
12 association liens that arise under a declaration filed pursuant
13 to chapter 514A or 514B.

14 (c) This section shall not apply to a foreclosure for
15 which the mortgagor has elected to participate in the mortgage
16 foreclosure dispute resolution program pursuant to part

17 (d) The judiciary may create and adopt a form for a
18 conversion petition.

19 §667-V Petition for conversion; residential property;
20 required contents. A petition filed pursuant to section 667-U
21 shall contain at a minimum:



- 1 (1) A caption setting forth the name of the court, the
2 title of the action, and the file number; provided
3 that the title of the action shall include the names
4 of the filing party as petitioner and the foreclosing
5 party as the respondent;
- 6 (2) The name, mailing address, and telephone number of the
7 filing party;
- 8 (3) The address or tax map key number and the certificate
9 of title or transfer certificate of title number if
10 within the land court's jurisdiction, of the property
11 subject to the foreclosure action;
- 12 (4) A statement identifying all other owner-occupants and
13 mortgagors of the property whose interests are pledged
14 or otherwise encumbered by the mortgage that is being
15 foreclosed and all persons who have signed the
16 promissory note or other instrument evidencing the
17 debt secured by the mortgage that is being foreclosed,
18 including without limitation co-obligors and
19 guarantors;
- 20 (5) A certification under penalty of perjury that the
21 filing party is an owner-occupant of the subject



1 property and seeks to convert the nonjudicial
2 foreclosure to a judicial proceeding;

3 (6) A statement certifying that the filing party served a
4 copy of the petition on the attorney identified in the
5 foreclosure notice under section 667-5 or 667-22
6 either by personal delivery at, or by postage prepaid
7 United States mail to, the address of the attorney as
8 set forth in the foreclosure notice under section 667-
9 5 or 667-22; and

10 (7) A copy of the foreclosure notice that was served on
11 the filing party, pursuant to section 667-5 or 667-22
12 and for which the filing party is seeking to convert
13 to a judicial proceeding.

14 (b) The assignment of parties in the petition for
15 conversion pursuant to subsection (a) shall relate to the
16 petition for conversion only and shall not be construed to
17 affect the assignment of parties in a nonjudicial power of sale
18 foreclosure converted to a judicial foreclosure pursuant to this
19 part.

20 §667-W Notice of default and intention to foreclose;
21 residential property; required statement on conversion. (a)



1 The foreclosure notice that is served as required under section
2 667-5 or 667-22 shall include, in addition to the contents
3 required under section 667-5 or 667-22, a statement printed in
4 not less than fourteen-point font as follows:

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



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

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

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



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

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

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



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

4 "§667-X Definitions. For purposes of this chapter,
5 "foreclosure notice" shall mean notice of intention to foreclose
6 given pursuant to section 667-5 or notice of default and
7 intention to foreclose prepared pursuant to section 667-22.

8 §667-Y Prohibited conduct. It shall be a prohibited
9 practice for any foreclosing mortgagee to engage in any of the
10 following practices:

- 11 (1) Holding a public sale on a date, at a time, or at a
12 place other than that described in the public notice
13 of the public sale or a properly noticed postponement;
14 (2) Specifying a fictitious place in the public notice of
15 the public sale;
16 (3) Conducting a postponed public sale on a date other
17 than the date described in the new public notice of
18 the public sale;
19 (4) Delaying the delivery of the recorded, conformed copy
20 of the conveyance document to a bona fide purchaser



- 1 who purchases in good faith for more than forty-five
2 days after the completion of the public sale;
- 3 (5) Completing nonjudicial foreclosure proceedings during
4 short sale escrows with a bona fide purchaser if the
5 short sale offer is at least five per cent greater
6 than the public sale price; provided that escrow is
7 opened within ten days and closed within forty-five
8 days of the public sale; and provided further that a
9 bona fide short sale purchaser shall have priority
10 over any other purchaser;
- 11 (6) Completing nonjudicial foreclosure proceedings during
12 bona fide loan modification negotiations with the
13 mortgagor; or
- 14 (7) Completing nonjudicial foreclosure proceedings against
15 a mortgagor who has been accepted or is being
16 evaluated for consideration for entry into a federal
17 loan modification program before obtaining a
18 certificate or other documentation confirming that the
19 mortgagor is no longer eligible or an active
20 participant of that federal program.



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

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



1 §667-AA Valid notice. (a) Any notices made pursuant to
2 this chapter may be issued only by persons authorized by a
3 foreclosing mortgagee or lender pursuant to an affiliate
4 statement signed by that foreclosing mortgagee or lender and
5 recorded at the bureau of conveyances identifying the agency or
6 affiliate relationship and the authority granted or conferred to
7 that agent or representative.

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

12 (c) Any notice provided by a mortgage servicer, including
13 an agent, employee, or representative of that mortgage servicer,
14 shall be issued only by a mortgage servicer that has been listed
15 in the affiliate statement filed by the foreclosing mortgagee or
16 lender under subsection (a); provided further that the mortgage
17 servicer shall be licensed under or otherwise exempt from
18 chapter 454M. The agency relationship or affiliation of the
19 mortgage servicer and the foreclosing mortgagee or lender and
20 any authority granted or conferred to that mortgage servicer



1 shall be described in the affiliate statement filed under both
2 subsection (a) and section 454M-5(a)(4)(F).

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

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

13 §667-AC Unfair or deceptive act or practice. Any
14 foreclosing mortgagee who violates this chapter shall have
15 committed an unfair or deceptive act or practice under section
16 480-2."

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

19 "(o) Every person licensed under any chapter within the
20 jurisdiction of the department of commerce and consumer affairs
21 and every person licensed subject to chapter 485A or registered



1 under chapter 467B shall pay upon issuance of a license, permit,
2 certificate, or registration a fee and a subsequent annual fee
3 to be determined by the director and adjusted from time to time
4 to ensure that the proceeds, together with all other fines,
5 income, and penalties collected under this section, do not
6 surpass the annual operating costs of conducting compliance
7 resolution activities required under this section. The fees may
8 be collected biennially or pursuant to rules adopted under
9 chapter 91, and shall be deposited into the special fund
10 established under this subsection. Every filing pursuant to
11 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
12 initial filing and at each renewal period in which a renewal is
13 required, a fee that shall be prescribed by rules adopted under
14 chapter 91, and that shall be deposited into the special fund
15 established under this subsection. Any unpaid fee shall be paid
16 by the licensed person, upon application for renewal,
17 restoration, reactivation, or reinstatement of a license, and by
18 the person responsible for the renewal, restoration,
19 reactivation, or reinstatement of a license, upon the
20 application for renewal, restoration, reactivation, or
21 reinstatement of the license. If the fees are not paid, the



1 director may deny renewal, restoration, reactivation, or
2 reinstatement of the license. The director may establish,
3 increase, decrease, or repeal the fees when necessary pursuant
4 to rules adopted under chapter 91. The director may also
5 increase or decrease the fees pursuant to section 92-28.

6 There is created in the state treasury a special fund to be
7 known as the compliance resolution fund to be expended by the
8 director's designated representatives as provided by this
9 subsection. Notwithstanding any law to the contrary, all
10 revenues, fees, and fines collected by the department shall be
11 deposited into the compliance resolution fund. Unencumbered
12 balances existing on June 30, 1999, in the cable television fund
13 under chapter 440G, the division of consumer advocacy fund under
14 chapter 269, the financial institution examiners' revolving
15 fund, section 412:2-109, the special handling fund, section
16 414-13, and unencumbered balances existing on June 30, 2002, in
17 the insurance regulation fund, section 431:2-215, shall be
18 deposited into the compliance resolution fund. This provision
19 shall not apply to the drivers education fund underwriters fee,
20 sections 431:10C-115 and 431:10G-107, insurance premium taxes
21 and revenues, revenues of the workers' compensation special



1 compensation fund, section 386-151, the captive insurance
2 administrative fund, section 431:19-101.8, the insurance
3 commissioner's education and training fund, section 431:2-214,
4 the medical malpractice patients' compensation fund as
5 administered under section 5 of Act 232, Session Laws of Hawaii
6 1984, and fees collected for deposit in the office of consumer
7 protection restitution fund, section 487-14, the real estate
8 appraisers fund, section 466K-1, the real estate recovery fund,
9 section 467-16, the real estate education fund, section 467-19,
10 the contractors recovery fund, section 444-26, the contractors
11 education fund, section 444-29, [~~and~~] the condominium education
12 trust fund, section 514B-71[-], and the mortgage foreclosure
13 dispute resolution special fund, section 667-P. Any law to the
14 contrary notwithstanding, the director may use the moneys in the
15 fund to employ, without regard to chapter 76, hearings officers
16 and attorneys. All other employees may be employed in
17 accordance with chapter 76. Any law to the contrary
18 notwithstanding, the moneys in the fund shall be used to fund
19 the operations of the department. The moneys in the fund may be
20 used to train personnel as the director deems necessary and for
21 any other activity related to compliance resolution.



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

- 4 (1) Any licensee or applicant under any chapter subject to
5 the jurisdiction of the department of commerce and
6 consumer affairs has complied with that chapter;
7 (2) Any person subject to chapter 485A has complied with
8 that chapter;
9 (3) Any person submitting any filing required by chapter
10 514E or section 485A-202(a)(26) has complied with
11 chapter 514E or section 485A-202(a)(26);
12 (4) Any person has complied with the prohibitions against
13 unfair and deceptive acts or practices in trade or
14 commerce; or
15 (5) Any person subject to chapter 467B has complied with
16 that chapter;

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



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

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

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

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

14 "~~[-]~~ §454M-4 ~~[-]~~ License; fees; renewals[-]; voluntary
15 surrender of license. (a) An applicant for licensure shall
16 file an application on a form prescribed by the commissioner and
17 shall pay an application fee of \$500. Each license shall expire
18 on June 30 of each calendar year. A license may be renewed by
19 filing a renewal statement on a form prescribed by the
20 commissioner and paying a renewal fee of \$250, on or before July
21 1 for licensure for the following year.



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

3 (1) [~~The applicant's form~~] Form and place of organization;

4 (2) [~~The applicant's tax~~] Tax identification number; and

5 (3) [~~The applicant's proposed~~] Proposed method of doing
6 business.

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

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

21 (1) The date of surrender;



1 (2) The name, address, telephone number, facsimile number,
2 and electronic address of a contact individual with
3 knowledge and authority sufficient to communicate with
4 the commissioner regarding all matters relating to the
5 licensee during the period that it was licensed
6 pursuant to this chapter;

7 (3) The reason or reasons for surrender;

8 (4) The original license issued pursuant to this chapter
9 to the mortgage servicer; and

10 (5) If applicable, a copy of all notices to affected
11 borrowers required by the Real Estate Settlement
12 Procedures Act, Title 12 United States Code Section
13 2601 et seq., or by regulations adopted pursuant to
14 the Real Estate Settlement Procedures Act, of the
15 assignment, sale, or transfer of the servicing of all
16 relevant loans that the licensee is currently
17 servicing under the license being surrendered.

18 Voluntary surrender of a license shall be effective upon
19 the date of surrender specified on the written notice to the
20 commissioner as required by this subsection; provided that if a
21 mortgage servicer is required to assign, sell, or transfer the



1 servicing of any loans, the voluntary surrender of the mortgage
2 servicer's license shall be effective upon the effective date of
3 the assignment, sale, or transfer of the servicing of all
4 loans."

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

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

- 9 (1) Safeguard and account for any money handled for the
10 borrower;
- 11 (2) Act with reasonable skill, care, timeliness,
12 promptness, and diligence;
- 13 (3) Disclose to the commissioner in the servicer's license
14 application and each yearly renewal a complete,
15 current schedule of the ranges of costs and fees it
16 charges borrowers for its servicing-related
17 activities; ~~and~~
- 18 (4) File ~~[with the commissioner upon request]~~ a report
19 with each yearly renewal statement in a form and
20 format acceptable to the director detailing the
21 servicer's activities in this State, including:



- 1 (A) The number of mortgage loans the servicer is
2 servicing;
- 3 (B) The type and characteristics of ~~such~~ loans
4 serviced in this State;
- 5 (C) The number of serviced loans in default, along
6 with a breakdown of thirty-, sixty-, and ninety-
7 day delinquencies;
- 8 (D) Information on loss mitigation activities,
9 including details on workout arrangements
10 undertaken;
- 11 (E) Information on foreclosures commenced in this
12 State; ~~and~~
- 13 (F) The affiliations of the mortgage servicer,
14 including any lenders or mortgagees for which the
15 mortgage servicer provides service, any
16 subsidiary or parent entities of the mortgage
17 servicer, and a description of the authority held
18 by the mortgage servicer through its
19 affiliations; and
- 20 ~~[(F)]~~ (G) Any other information that the commissioner may
21 require ~~[-]~~; and



1 (5) Maintain an office in the State that is staffed by at
2 least one agent or employee for the purposes of
3 addressing consumer inquiries or complaints and
4 accepting service of process; provided that the
5 mortgage servicer's business constitutes at least a
6 twenty per cent share of the portion of the total
7 mortgage loan service market in the State that was
8 serviced by mortgage servicers licensed under this
9 chapter within the previous calendar year; and
10 provided further that nothing in this section shall
11 prohibit a mortgagee as defined by section 667-21 or a
12 mortgage servicer from contracting with a licensee
13 that maintains an office in this State in conformity
14 with this section for the purposes of addressing
15 consumer inquiries or complaints and accepting service
16 of process."

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

19 " ~~[+]§454M-10[+]~~ **Penalty.** Any person who violates any
20 provision of this chapter may be subject to an administrative
21 fine of at least \$1,000 and not more than ~~[\$5,000]~~ \$7,000 for



1 each violation[-]; provided that \$1,000 of the fine shall be
2 deposited into the mortgage foreclosure dispute resolution
3 special fund established pursuant to section 667-P."

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

6 "§501-151 Pending actions, judgments; recording of,
7 notice. No writ of entry, action for partition, or any action
8 affecting the title to real property or the use and occupation
9 thereof or the buildings thereon, and no judgment, nor any
10 appeal or other proceeding to vacate or reverse any judgment,
11 shall have any effect upon registered land as against persons
12 other than the parties thereto, unless a full memorandum
13 thereof, containing also a reference to the number of
14 certificate of title of the land affected is filed or recorded
15 and registered. Except as otherwise provided, every judgment
16 shall contain or have endorsed on it the State of Hawaii general
17 excise taxpayer identification number, the federal employer
18 identification number, or the last four digits only of the
19 social security number for persons, corporations, partnerships,
20 or other entities against whom the judgment is rendered. If the
21 judgment debtor has no social security number, State of Hawaii



1 general excise taxpayer identification number, or federal
2 employer identification number, or if that information is not in
3 the possession of the party seeking registration of the
4 judgment, the judgment shall be accompanied by a certificate
5 that provides that the information does not exist or is not in
6 the possession of the party seeking registration of the
7 judgment. Failure to disclose or disclosure of an incorrect
8 social security number, State of Hawaii general excise taxpayer
9 identification number, or federal employer identification number
10 shall not in any way adversely affect or impair the lien created
11 upon recording of the judgment. This section does not apply to
12 attachments, levies of execution, or to proceedings for the
13 probate of wills, or for administration in a probate court;
14 provided that in case notice of the pendency of the action has
15 been duly registered it is sufficient to register the judgment
16 in the action within sixty days after the rendition thereof.

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

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



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

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

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

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

11 "(h) The amount of the special assessment assessed under
12 subsection (g) shall not exceed the total amount of unpaid
13 regular monthly common assessments that were assessed during the
14 [~~six~~] twelve months immediately preceding the completion of the
15 judicial or nonjudicial power of sale foreclosure. In no event
16 shall the amount of the special assessment exceed the sum of
17 [~~\$3,600.~~] \$7,200."

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

20 "(h) The amount of the special assessment assessed under
21 subsection (g) shall not exceed the total amount of unpaid



1 regular monthly common assessments that were assessed during the
2 [~~six~~] twelve months immediately preceding the completion of the
3 judicial or nonjudicial power of sale foreclosure. In no event
4 shall the amount of the special assessment exceed the sum of
5 [~~\$3,600.~~] \$7,200."

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

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



1 deposited by the clerk of the circuit court into the judiciary
2 computer system special fund pursuant to section 601-3.7.

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

5 **SCHEDULE**

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

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

14 "§667-3 Proceeds, how applied. Mortgage and other
15 creditors shall be entitled to payment according to the priority
16 of their liens, and not pro rata; and judgments of foreclosure
17 and foreclosures by power of sale that are conducted in
18 compliance with this part and for which an affidavit is recorded
19 as required under section 667-5 shall operate to extinguish the
20 liens of subsequent mortgages and liens of the same property,
21 without forcing prior mortgagees or lienors to their right of



1 recovery. The surplus after payment of the mortgage foreclosed,
2 shall be applied pro tanto to the next junior mortgage[~~7~~] or
3 lien, and so on to the payment, wholly or in part, of mortgages
4 and liens junior to the one assessed."

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

7 "§667-5 Foreclosure under power of sale; notice; affidavit
8 after sale[~~-~~]; deficiency judgments. (a) When a power of sale
9 is contained in a mortgage, and where the mortgagee, the
10 mortgagee's successor in interest, or any person authorized by
11 the power to act in the premises, desires to foreclose under
12 power of sale upon breach of a condition of the mortgage, the
13 mortgagee, successor, or person shall be represented by an
14 attorney who is licensed to practice law in the State and is
15 physically located in the State. The attorney shall:

16 (1) Give notice of the mortgagee's, successor's, or
17 person's intention to foreclose the mortgage and of
18 the sale of the mortgaged property[~~, by~~] as follows:
19 (A) By serving, not less than twenty-one days before
20 the date of sale, written notice of intent to
21 foreclose on all persons entitled to notice under



1 this part in the same manner as service of a
2 civil complaint under chapter 634 and the Hawaii
3 rules of civil procedure; provided that in the
4 case of nonjudicial foreclosure of a lien by an
5 association against a mortgagor who is not an
6 owner-occupant, the association shall mail the
7 notice by certified or registered mail, not less
8 than twenty-one days before the date of sale, to:

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

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

15 (B) By publication of the notice once in each of
16 three successive weeks [-], constituting three
17 publications [+-] with the last publication to be
18 not less than fourteen days before the day of
19 sale, in a daily newspaper having [a] the largest
20 general circulation in the specific county in
21 which the mortgaged property lies; [and] provided



1 that for property located in a county with a
2 population of more than one hundred thousand but
3 less than three hundred thousand, the public
4 notice shall be published in the newspaper having
5 the largest circulation expressly in the eastern
6 or western half of the county, corresponding to
7 the location of the subject property;

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

13 [~~2~~] (3) Give any notices and do all acts as [are]
14 authorized or required by the power contained in the
15 mortgage.

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

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

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



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

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

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

14 (d) Any sale, of which notice has been given [~~as~~
15 ~~aforesaid,~~ 7] pursuant to subsections (a) and (b) may be postponed
16 from time to time by public announcement made by the mortgagee
17 or by [~~some~~] a person acting on the mortgagee's behalf. Upon
18 request made by any person who is entitled to notice pursuant to
19 section 667-5.5 or 667-6, or this section, the mortgagee or
20 person acting on the mortgagee's behalf shall provide the date
21 and time of a postponed auction, or if the auction is canceled,



1 information that the auction was canceled. The mortgagee,
2 within thirty days after selling the property in pursuance of
3 the power, shall file a copy of the notice of sale and the
4 mortgagee's affidavit, setting forth the mortgagee's acts in the
5 premises fully and particularly, in the bureau of conveyances.

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

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

20 [-(e)—The] (f) Subject to the requirements of part _____,
21 the affidavit and copy of the notice shall be recorded and



1 indexed by the registrar, in the manner provided in chapter 501
2 or 502, as the case may be.

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

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

7 "§667-5.5 Foreclosure notice~~[-]~~; planned communities;
8 condominiums; cooperative housing projects. Notwithstanding any
9 law or agreement to the contrary, any person who forecloses on a
10 property under this part within a planned community, a
11 condominium apartment or unit, or an apartment in a cooperative
12 housing project shall notify, by [~~way of~~] registered or
13 certified mail, the board of directors of the planned community
14 association, the association of owners of the condominium
15 project, or the cooperative housing project in which the
16 property to be foreclosed is located~~[7]~~ of the foreclosure at
17 the time foreclosure proceedings are begun. The notice, at a
18 minimum, shall identify the property, condominium apartment or
19 unit, or cooperative apartment [~~which~~] that is the subject of
20 the foreclosure and identify the name or names of the person or
21 persons bringing foreclosure proceedings. This section shall



1 not apply [~~when~~] if the planned community association,
2 condominium association of owners, or cooperative housing
3 corporation is a party in a foreclosure action. This section
4 shall not affect civil proceedings against parties other than
5 the planned community association, association of owners, or
6 cooperative housing corporation."

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

9 "§667-10 Power unaffected by transfer; surplus after sale.

10 No sale or transfer by the mortgagor shall impair or annul any
11 right or power of attorney given in the mortgage to the
12 mortgagee to sell or transfer the mortgaged property, as
13 attorney or agent of the mortgagor, except as otherwise provided
14 by chapters 501 and 502. When public sale is made of the
15 mortgaged property under this [~~chapter,~~] part, the remainder of
16 the proceeds, if any, shall be paid over to the owner of the
17 mortgaged property, after deducting the amount of claim and all
18 expenses attending the same."

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

21 "(b) As used in this part:



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

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

12 "Association" has the same meaning as the term is defined
13 in section 514B-3.

14 "Borrower" means the borrower, maker, cosigner, or
15 guarantor under a mortgage agreement.

16 "Foreclosing mortgagee" means the mortgagee that intends to
17 conduct a power of sale foreclosure; provided that the mortgagee
18 is a federally insured bank, a federally insured savings and
19 loan association, a federally insured savings bank, a depository
20 financial services loan company, a nondepository financial
21 services loan company, a credit union insured by the National



1 Credit Union Administration, a bank holding company, a foreign
2 lender as defined in section 207-11, or an institutional
3 investor as defined in section 454-1.

4 Unless the context clearly indicates otherwise, as used in
5 this part, a "foreclosing mortgagee" shall encompass all of the
6 following entities:

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

17 "Mailed" means to be sent by regular mail, postage prepaid,
18 and by certified, registered, or express mail, postage prepaid
19 and return receipt requested.

20 "Mortgage" means a mortgage, security agreement, or other
21 document under which property is mortgaged, encumbered, pledged,



1 or otherwise rendered subject to a lien for the purpose of
2 securing the payment of money or the performance of an
3 obligation.

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

6 "Mortgaged property" means the property that is subject to
7 the lien of the mortgage.

8 "Mortgagee" means the current holder of record of the
9 mortgagee's or the lender's interest under the mortgage, or the
10 current mortgagee's or lender's duly authorized agent.

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

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

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

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



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

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

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

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



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

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

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

9 "§667-22 Notice of default[+] and intention to foreclose;
10 contents; distribution. (a) When the mortgagor or the borrower
11 has breached the mortgage agreement, and when the foreclosing
12 mortgagee intends to conduct a power of sale foreclosure under
13 this part, the foreclosing mortgagee shall prepare a written
14 notice of default and intention to foreclose addressed to the
15 mortgagor, the borrower, and any guarantor. The notice of
16 default and intention to foreclose shall state:

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

18 (2) The name and last known address of [~~the mortgagor, the~~
19 ~~borrower,~~] all mortgagors, borrowers, and any

20 [~~guarantor,~~] guarantors;



- 1 (3) The address or a description of the location of the
2 mortgaged property, ~~[and]~~ the tax map key number, and
3 the certificate of title or transfer certificate of
4 title number if within the jurisdiction of the land
5 court, of the mortgaged property;
- 6 (4) The description of the default [~~and~~] or, if the
7 default is a monetary default, an itemization of the
8 delinquent amount [~~shall be given~~];
- 9 (5) The action [~~that must be taken~~] required to cure the
10 default [~~and~~] including the delinquent amount [~~to cure~~
11 ~~the default, together with~~] and the estimated amount
12 of the foreclosing mortgagee's attorney's fees and
13 costs, and all other fees and costs related to the
14 default estimated to be incurred by the foreclosing
15 mortgagee [~~related to the default~~] by the deadline
16 date;
- 17 (6) The date by which the default must be cured, which
18 [~~deadline date~~] shall be at least sixty days after the
19 date of the notice of default [~~and~~] and intention to
20 foreclose;



- 1 (7) ~~[That]~~ A statement that if the default is not cured by
2 the deadline date stated in the notice of default [-]
3 and intention to foreclose, the entire unpaid balance
4 of the moneys owed to the mortgagee under the mortgage
5 agreement will [be] become due, that the mortgagee
6 intends to conduct a power of sale foreclosure to sell
7 the mortgaged property at a public sale without any
8 court action and without going to court, and that the
9 mortgagee or any other person may acquire the
10 mortgaged property at the public sale; ~~[and]~~
- 11 (8) The name, address, ~~[including]~~ electronic address, and
12 telephone number of the attorney who is representing
13 the foreclosing mortgagee; provided that the attorney
14 shall be licensed to practice law in the State and
15 physically located in the State[-]; and
- 16 (9) Notice of the right of the owner-occupant to elect to
17 participate in any other process as established by
18 law.
- 19 (b) The notice of default and intention to foreclose shall
20 also contain wording substantially similar to the following in



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

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

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

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

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



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

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

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

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

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



- 1 (1) The original mortgage agreement, and copies of any
2 subsequent mortgage agreements and assignments;
- 3 (2) The promissory note signed by the mortgagor and any
4 endorsements and allonges on the note; and
- 5 (3) Any other documents that amend or alter the terms of
6 the original mortgage agreement that were signed by
7 the mortgagor and the mortgagee or any successors or
8 assigns of the mortgagor or the mortgagee.
- 9 (d) The notice of default and intention to foreclose shall
10 also include contact information for local approved housing
11 counselors and approved budget and credit counselors.
- 12 [~~e~~] (e) The foreclosing mortgagee shall have the notice
13 of default and intention to foreclose served on:
- 14 (1) The mortgagor and the borrower[+] in the same manner
15 as service of a civil complaint under chapter 634 or
16 the Hawaii rules of civil procedure, as they may be
17 amended from time to time;
- 18 (2) Any prior or junior creditors [~~having~~] who have a
19 recorded lien on the mortgaged property before the
20 recordation of the notice of default and intention to
21 foreclose under section 667-23;



1 (3) The state director of taxation;

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

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

7 ~~[-(5)-]~~ (6) Any other person entitled to receive notice under
8 [section 667-5.5.] this part.

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

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

16 " ~~[+]~~ §667-23 ~~[+]~~ Recordation of notice of default ~~[-]~~ and
17 intention to foreclose. Before the deadline date in the notice
18 of default ~~[-]~~ and intention to foreclose, the notice ~~[of~~
19 ~~default]~~ shall be recorded in a recordable form ~~[shall be~~
20 ~~recorded]~~ in a manner similar to recordation of notices of
21 pendency of action under section 501-151 or section 634-51, or



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

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

10 "[+]§667-24[+] Cure of default. (a) If the default is
11 cured as required by the notice of default[-] and intention to
12 foreclose, or if the parties have reached a settlement document,
13 the foreclosing mortgagee shall rescind the notice of default[-]
14 and intention to foreclose. Within fourteen days of the date of
15 the cure[-] or a settlement document reached by the parties, the
16 foreclosing mortgagee shall so notify any person who was served
17 with the notice of default[-] and intention to foreclose. If
18 the notice of default and intention to foreclose was recorded, a
19 release of the notice of default and intention to foreclose
20 shall be recorded.



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

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

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

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



1 (2) At a state facility in Hilo, for a public sale of
2 mortgaged property located in the eastern portion of
3 the county of Hawaii;

4 (3) At a state facility in Kailua-Kona, for a public sale
5 of mortgaged property located in the western portion
6 of the county of Hawaii;

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

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

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

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

20 "(a) If the default is not cured as stated in the notice
21 of default [7] and intention to foreclose, the foreclosing



1 mortgagee shall conduct two open houses of the mortgaged
2 property before the public sale; provided that the foreclosing
3 mortgagee timely received the signed letter of agreement from
4 the mortgagor as required by the notice of default[-] and
5 intention to foreclose. Only two open houses shall be required
6 even if the date of the public sale is postponed."

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

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

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

- 12 (1) The date, time, and place of the public sale;
- 13 (2) The dates and times of the two open houses of the
14 mortgaged property, or if there will not [tø] be any
15 open houses, the public notice shall so state;
- 16 (3) The unpaid balance of the moneys owed to the mortgagee
17 under the mortgage agreement;
- 18 (4) A description of the mortgaged property, including the
19 address [~~or description of the location of the~~
20 ~~mortgaged property,~~] and the tax map key number of the
21 mortgaged property;



- 1 (5) The name of the mortgagor and the borrower;
- 2 (6) The name of the foreclosing mortgagee;
- 3 (7) The name of any prior or junior creditors having a
- 4 recorded lien on the mortgaged property before the
- 5 recordation of the notice of default and intention to
- 6 foreclose under section 667-23;
- 7 (8) The name, the address in the State, and the telephone
- 8 number in the State of the person in the State
- 9 conducting the public sale; [~~and~~]
- 10 (9) The terms and conditions of the public sale[~~-~~]; and
- 11 (10) An estimate of the opening bid."

12 2. By amending subsections (c) and (d) to read:

13 "(c) If the default is not cured as required by the notice

14 of default[~~-~~] and intention to foreclose, the foreclosing

15 mortgagee shall have a copy of the public notice of the public

16 sale of the mortgaged property:

- 17 (1) Mailed or delivered to the mortgagor and the borrower
- 18 at their respective last known addresses;
- 19 (2) Mailed or delivered to any prior or junior creditors
- 20 having a recorded lien on the mortgaged property

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

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

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

6 (5) Posted on the mortgaged property or on such other real
7 property of which the mortgaged property is a part;
8 and

9 (6) Mailed or delivered to any other person entitled to
10 receive notice under section 667-5.5[-] or 667-S.

11 (d) The foreclosing mortgagee shall have the public notice
12 of the public sale printed in not less than seven-point font and
13 published in the classified section of a daily newspaper [ef]
14 having the largest general circulation specifically in the
15 county where the mortgaged property is located[-]; provided that
16 for property located in a county with a population of more than
17 one hundred thousand but less than three hundred thousand, the
18 public notice shall be published in the newspaper having the
19 largest general circulation specifically in the western or
20 eastern half of the county, as the case may be, in which the
21 property is located. The public notice shall be published once



1 each week for three consecutive weeks [~~-~~], constituting three
2 publications[~~+~~]. The public sale shall take place no sooner
3 than fourteen days after the date of the publication of the
4 third public notice advertisement."

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

7 "§667-28 Postponement, cancellation of sale. (a) The
8 public sale may be either postponed or canceled by the
9 foreclosing mortgagee. Notice of the postponement or the
10 cancellation of the public sale shall be[~~-~~

11 ~~(1) Announced]~~ announced by the foreclosing mortgagee at
12 the date, time, and place of the last scheduled public
13 sale [~~+~~ and

14 ~~(2) Provided, upon request, to any other person who is~~
15 ~~entitled to receive the notice of default under~~
16 ~~section 667-22(e)].~~

17 (b) If there is a postponement of the public sale of the
18 mortgaged property, a new public notice of the public sale shall
19 be published once in the format described in section 667-27.

20 The new public notice shall state that it is a notice of a
21 postponed sale. The public sale shall take place no sooner than



1 fourteen days after the date of the publication of the new
2 public notice. [~~No sooner~~] Not less than fourteen days before
3 the date of the public sale, a copy of the new public notice
4 shall be posted on the mortgaged property or on [~~such other~~]
5 another real property of which the mortgaged property is a part,
6 and it shall be mailed or delivered to the mortgagor, to the
7 borrower, and to any other person entitled to receive notice
8 under section [~~667-27.~~] 667-22(e).

9 (c) Upon the fourth postponement of every series of four
10 consecutive postponements, the foreclosing mortgagee shall
11 follow all of the public notice of public sale requirements of
12 section 667-27, including the requirements of mailing and
13 posting under section 667-27(c) and of publication under section
14 667-27(d).

15 [~~(e)~~] (d) The default under the mortgage agreement may be
16 cured no later than three business days before the date of the
17 public sale of the mortgaged property by paying the entire
18 amount which would be owed to the foreclosing mortgagee if the
19 payments under the mortgage agreement had not been accelerated,
20 plus the foreclosing mortgagee's attorney's fees and costs, and
21 all other fees and costs incurred by the foreclosing mortgagee



1 related to the default, unless otherwise agreed to between the
2 foreclosing mortgagee and the borrower. There is no right to
3 cure the default or any right of redemption after that time. If
4 the default is so cured, the public sale shall be canceled."

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

7 "[~~f~~]**\$667-29**[+] **Authorized bidder; successful bidder.** Any
8 person, including the foreclosing mortgagee, shall be authorized
9 to bid for the mortgaged property at the public sale and to
10 purchase the mortgaged property. The highest bidder who meets
11 the requirements of the terms and conditions of the public sale
12 shall be the successful bidder. The public sale shall be
13 considered as being held when the mortgaged property is declared
14 by the foreclosing mortgagee as being sold to the successful
15 bidder. When the public sale is held, the successful bidder at
16 the public sale, as the purchaser, shall make a nonrefundable
17 downpayment to the foreclosing mortgagee of not less than ten
18 per cent of the highest successful bid price. If the successful
19 bidder is the foreclosing mortgagee or any other mortgagee
20 having a recorded lien on the mortgaged property before the
21 recordation of the notice of default and intention to foreclose



1 under section 667-23, the downpayment requirement may be
2 satisfied by offset and a credit bid up to the amount of the
3 mortgage debt."

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

6 "(a) After the purchaser completes the purchase by paying
7 the full purchase price and the costs for the purchase, the
8 mortgaged property shall be conveyed to the purchaser by a
9 conveyance document. The conveyance document shall be in a
10 recordable form and shall be signed by the foreclosing mortgagee
11 in the foreclosing mortgagee's name. The mortgagor or borrower
12 shall not be required to sign the conveyance document [~~on his or~~
13 ~~her own behalf~~].

14 (b) From the sale proceeds, after paying all liens and
15 encumbrances in the order of priority as a matter of law, after
16 paying the foreclosing mortgagee's attorney's fees and costs,
17 after paying the fees and costs of the power of sale
18 foreclosure, and after paying the moneys owed to the foreclosing
19 mortgagee, the balance of the sale proceeds shall be distributed
20 by the foreclosing mortgagee to junior creditors having valid
21 liens on the mortgaged property in the order of their priority



1 and not pro rata. Any remaining surplus after payment in full
2 of all valid lien creditors shall be distributed to the
3 mortgagor."

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

6 "[+]§667-32[+] Affidavit after public sale; contents. (a)

7 After the public sale is held, the foreclosing mortgagee shall
8 sign an affidavit under penalty of perjury:

- 9 (1) Stating that the power of sale foreclosure was made
10 pursuant to the power of sale provision in the
11 mortgage;
- 12 (2) Stating that the power of sale foreclosure was
13 conducted as required by this part;
- 14 (3) Summarizing what was done by the foreclosing
15 mortgagee;
- 16 (4) Attaching a copy of the recorded notice of default[+]
17 and intention to foreclose;
- 18 (5) Attaching a copy of the last public notice of the
19 public sale[+];



1 (6) Referencing the document number of the affiliate
2 statement filed at the bureau of conveyances as
3 required under section 667-AA; and

4 (7) Stating the date of filing and any relevant
5 referencing information assigned by the division of
6 financial institutions to the statement filed with the
7 commissioner of financial institutions of the mortgage
8 servicer affiliate statement as required under section
9 454M-5(a)(4)(F).

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

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

20 (2) The foreclosing mortgagee is a "foreclosing mortgagee"
21 as defined in the power of sale foreclosure law;



1 (3) The power of sale foreclosure is of a mortgage made by
2 _____ (name of mortgagor)
3 ("mortgagor"), dated _____, and recorded in the
4 _____ (bureau of conveyances or office of
5 the assistant registrar of the land court) as
6 _____ (recordation information). The
7 mortgaged property is located at:
8 _____ (address or description of
9 location) and is identified by tax map key number:
10 _____. The legal description of the mortgaged
11 property is attached as Exhibit "A". The name of the
12 borrower, if different from the mortgagor, is
13 _____ ("borrower");

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

18 (A) A notice of default and intention to foreclose
19 was served on the mortgagor, the borrower, and
20 the following person: _____. The
21 notice of default and intention to foreclose was



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

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

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

15 (D) The default was not cured by the deadline date in
16 the notice of default [✓] and intention to
17 foreclose;

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



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

9 (F) The public notice of the public sale was sent to
 10 the mortgagor, to the borrower, to the state
 11 director of taxation, to the director of finance
 12 of the county where the mortgaged property is
 13 located, and to the following:
 14 _____ . The public notice was sent on
 15 the following dates and in the following manner:
 16 _____ . Those dates were after the
 17 deadline date in the notice of default [7] and
 18 intention to foreclose, and those dates were at
 19 least sixty days before the date of the public
 20 sale;



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

7 (H) Two public showings (open houses) of the
8 mortgaged property were held (or were not held
9 because the mortgagor did not cooperate);

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

17 (J) At the time the public sale was held, the default
18 was not cured and there was no circuit court
19 foreclosure action pending in the circuit where
20 the mortgaged property is located;

21 and



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

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

4 "[+]§667-37[+] Judicial action of foreclosure before
5 public sale. This part shall not prohibit the borrower, the
6 foreclosing mortgagee, or any other creditor having a recorded
7 lien on the mortgaged property before the recordation of the
8 notice of default under section 667-23, from filing an action
9 for the judicial foreclosure of the mortgaged property in the
10 circuit court of the circuit where the mortgaged property is
11 located[; ~~provided that the action is filed before the public~~
12 ~~sale is held. While that circuit court foreclosure action is~~
13 ~~pending, the power of sale foreclosure process shall be~~
14 ~~stayed]."~~

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

17 "[+]§667-39[+] Right to enforce this part. (a) The
18 foreclosing mortgagee, any other creditor having a recorded lien
19 on the mortgaged property before the recordation of the notice
20 of default and intention to foreclose under section 667-23, the
21 borrower, and the mortgagor, may enforce this part by bringing



1 an action in the circuit court of the circuit where the
2 mortgaged property is located.

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

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

8 "[+]§667-41[+] Public information requirement. [All]
9 Beginning on September 1, 2011, all financial institutions,
10 mortgagees, lenders, business entities and organizations without
11 limitation, and persons, who intend to use the power of sale
12 foreclosure under this part, under the conditions required by
13 this part, shall also develop informational materials to educate
14 and inform borrowers and mortgagors. These materials shall be
15 made available to the public[7] and provided to the mortgagors
16 of all mortgage agreements entered into, including the borrowers
17 at the time of application for a mortgage or loan, or other
18 contract containing a power of sale foreclosure provision.
19 These materials, among other things, shall inform the borrower
20 that the financial institution and other business entities and
21 persons who are authorized under this part to exercise the power



1 of sale foreclosure, in the event of the borrower's default,
2 have the option of pursuing either a judicial or nonjudicial
3 foreclosure as provided by law. These informational materials
4 shall fully and completely explain these remedies[-] in simple
5 and understandable terms."

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

8 ~~["~~§667-34~~ Foreclosure sale; conclusive presumptions.~~

9 ~~Unless an appeal is taken as set forth in section 667-35, any~~
10 ~~foreclosure sale held in accordance with this part shall be~~
11 ~~conclusively presumed to have been conducted in a legal, fair,~~
12 ~~and reasonable manner. The sale price shall be conclusively~~
13 ~~presumed to be reasonable and equal to the fair market value of~~
14 ~~the property based on the circumstances and on the economic~~
15 ~~conditions at the time of the sale. The statements in the~~
16 ~~recorded affidavit shall be conclusive evidence as to the facts~~
17 ~~stated therein for any purpose, in any court and in any~~
18 ~~proceeding, and in favor of bona fide purchasers and~~
19 ~~encumbrancers for value without notice. The purchaser of the~~
20 ~~mortgaged property shall be conclusively presumed to be a bona~~
21 ~~fide purchaser. Encumbrancers for value include liens placed by~~



1 ~~lenders who provide the purchaser with purchase money in~~
2 ~~exchange for a mortgage or other security interest in the newly~~
3 ~~conveyed property."]~~

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

6 ~~["§667-35] Appeal to circuit court. The borrower, the~~
7 ~~mortgagor, and any creditor having a recorded lien on the~~
8 ~~mortgaged property before the recordation of the notice of~~
9 ~~default under section 667-23, shall have the right to file an~~
10 ~~appeal in the circuit court where the mortgaged property is~~
11 ~~located to contest the presumptions set forth in section 667-34,~~
12 ~~and the statements contained in the affidavit required by~~
13 ~~section 667-32. No appeal shall be filed later than thirty days~~
14 ~~after the recordation of the affidavit. Failure to timely~~
15 ~~appeal shall result in the statements in the affidavit and the~~
16 ~~presumptions set forth in section 667-34 becoming conclusive in~~
17 ~~accordance with the terms of that section."]~~

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

20 ~~["§667-42] Application of this part. The requirements of~~
21 ~~this part shall apply only to new mortgages, loans, agreements,~~



1 ~~and contracts containing power of sale foreclosure language~~
2 ~~executed by the borrowers or mortgagors after July 1, 1999."]~~

3 SECTION 37. On the effective date of this Act, there shall
4 be a phase-in period ending on August 15, 2011, in which any
5 owner-occupant, as defined under section 667-21(b), Hawaii
6 Revised Statutes, who is undergoing a nonjudicial foreclosure
7 for which the mortgagee's affidavit has not yet been filed
8 pursuant to sections 667-5 or 667-33, Hawaii Revised Statutes,
9 may elect to convert to a judicial foreclosure under section 5
10 of this Act. An owner-occupant who elects to convert a
11 nonjudicial foreclosure to a judicial foreclosure during the
12 phase-in period:

13 (1) Shall submit with the petition and filing fee as
14 required under sections 667-U and 667-V, Hawaii
15 Revised Statutes, copies of any foreclosure notices
16 received from the mortgagee and published notices of
17 the public sale made pursuant to section 667-5 or 667-
18 27, Hawaii Revised Statutes;

19 (2) Shall not be subject to the deadline described in
20 section 667-U(a)(2), Hawaii Revised Statutes; and



1 (3) Shall submit a filing fee of \$300, in lieu of the \$525
2 filing fee required under section 667-U(a)(6), Hawaii
3 Revised Statutes;
4 provided further that the requirements of section 667-W, Hawaii
5 Revised Statutes, shall not be applicable to the foreclosing
6 mortgagee.

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

17 SECTION 39. There is appropriated out of the mortgage
18 foreclosure dispute resolution special fund, established under
19 section 667-P, Hawaii Revised Statutes, the sum of \$1,850,000,
20 or so much thereof as may be necessary for fiscal year 2011-2012
21 and the same sum or so much thereof as may be necessary for



1 fiscal year 2012-2013 for all expenses of the mortgage
2 foreclosure dispute resolution program, including the hiring of
3 one full-time program specialist exempt from chapter 76, Hawaii
4 Revised Statutes, and one full-time office assistant exempt from
5 chapter 76, Hawaii Revised Statutes, in the division of
6 administrative hearings, department of commerce and consumer
7 affairs, to carry out the purposes of this Act, and for the
8 reimbursement of the compliance resolution fund of the amount
9 appropriated as seed capital to the mortgage foreclosure dispute
10 resolution special fund established under section 667-P, Hawaii
11 Revised Statutes.

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

14 SECTION 40. There shall be a moratorium on all new
15 nonjudicial foreclosure actions under part I of chapter 667,
16 Hawaii Revised Statutes, for property located in this State to
17 begin on the effective date of this Act and to end on July 1,
18 2012. No foreclosure by power of sale pursuant to section
19 667-5, Hawaii Revised Statutes, shall be initiated and the
20 registrar of the bureau of conveyances shall not record an
21 affidavit or notice of sale pursuant to section 667-5, Hawaii



1 Revised Statutes, for a power of sale foreclosure under section
2 667-5, Hawaii Revised Statutes, initiated during the moratorium
3 period established by this Act.

4 SECTION 41. The department of commerce and consumer
5 affairs shall submit a report to the legislature no later than
6 twenty days before the convening of the regular sessions of 2012
7 and 2013 on the operations and outcomes of the mortgage
8 foreclosure dispute resolution program established by section 1
9 of this Act, including recommendations for further legislation
10 if necessary for the efficient operation of the program.

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

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



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

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

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

8 (2) Sections 1, 13, and 14 shall be repealed on
9 September 30, 2014, and sections 514A-90(h) and
10 514B-146(h), Hawaii Revised Statutes, shall be
11 reenacted in the form in which they read on the day
12 before the effective date of this Act;

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

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

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

19 (6) Upon the repeal of section 1, all moneys remaining in
20 the mortgage foreclosure dispute resolution special
21 fund established under section 667-P, Hawaii Revised



1 Statutes, shall be transferred to the compliance
2 resolution fund established under section 26-9(o),
3 Hawaii Revised Statutes.

4

APPROVED this 5 day MAY, 2011



GOVERNOR OF THE STATE OF HAWAII