
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Chapter 454M, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§454M- Unlicensed foreclosure actions voided. Any
5 action taken in connection with a mortgage foreclosure under
6 chapter 667 by a person who engages in the business of mortgage
7 servicing without a license as provided in this chapter shall be
8 void for purposes of chapter 667."

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

12 "**PART . MANDATORY MORTGAGE FORECLOSURE DISPUTE RESOLUTION**

13 **§667-A Definitions.** As used in this part:

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

16 "Dispute resolution" means a facilitated negotiation
17 between a mortgagor and mortgagee for the purpose of reaching an
18 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 "Neutral" means the person assigned to facilitate the
4 dispute resolution process required by this part.

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

7 **§667-B Dispute resolution required before foreclosure.**

8 (a) Before a public sale may be conducted pursuant to section
9 667-25 for a residential property that is occupied by one or
10 more mortgagors as a primary residence, the foreclosing
11 mortgagee shall, at the election of the mortgagor, participate
12 in dispute resolution pursuant to this part to attempt to reach
13 a negotiated settlement agreement to avoid foreclosure or to
14 mitigate damages if foreclosure is unavoidable.

15 (b) Dispute resolution required by this part shall be
16 conducted through the center for alternative dispute resolution,
17 as established by section 613-2, or its designee.

18 **§667-C Notice of dispute resolution required.** (a) Notice
19 of default and intention to foreclose served pursuant to section
20 667-22(e) shall include notice that the foreclosing mortgagee is
21 required, at the election of the mortgagor, to participate in
22 dispute resolution pursuant to this part for the purpose of



1 attempting to avoid foreclosure or to mitigate damages where
2 foreclosure is unavoidable.

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

5 (1) The name and contact information of a person or entity
6 with the authority to negotiate a loan modification on
7 behalf of the mortgagee;

8 (2) Contact information for all the local housing
9 counseling agencies approved by the United States
10 Department of Housing and Urban Development;

11 (3) A form for the mortgagor to use to elect or to waive
12 dispute resolution pursuant to this part that shall
13 contain the mailing address of the center for
14 alternative dispute resolution and instructions for
15 the return of the form to the center for alternative
16 dispute resolution;

17 (4) A description of the information that the mortgagor is
18 required to provide to the mortgagee and the center
19 for alternative dispute resolution;

20 (5) A statement that the mortgagor electing dispute
21 resolution shall provide a certification under penalty
22 of perjury that the mortgagor electing dispute



- 1 resolution is an owner-occupant of the subject
2 property, including supporting documentation;
- 3 (6) Contact information for an accredited consumer credit
4 counseling agency in the State;
- 5 (7) A statement that the mortgagor shall elect dispute
6 resolution pursuant to this part no later than thirty
7 days after receipt of the notice or the right shall be
8 waived; and
- 9 (8) A statement that the mortgagor shall consult with a
10 housing counselor approved by the United States
11 Department of Housing and Urban Development at least
12 thirty days prior to the first day of a scheduled
13 dispute resolution session.

14 **§667-D Election of dispute resolution; stay of foreclosure**
15 **proceedings.** (a) No later than thirty days after receipt of
16 notice of dispute resolution under section 667-C, a mortgagor
17 shall notify the center for alternative dispute resolution and
18 the mortgagee to indicate that the mortgagor elects to pursue
19 dispute resolution pursuant to this part. This notice shall
20 include the signed certification and supporting documentation
21 that the mortgagor electing dispute resolution is an owner-



1 occupant of the subject property pursuant to section 667-
2 C(b) (5).

3 (b) Upon receipt of notice that a mortgagor has elected to
4 pursue dispute resolution, the center for alternative dispute
5 resolution shall process the notice, assign the matter to a
6 neutral, and schedule the dispute resolution no later than
7 seventy-five days after receipt of the mortgagor's election to
8 pursue dispute resolution according to rules adopted by the
9 supreme court. All foreclosure proceedings shall be stayed
10 effective upon receipt by the center for alternative dispute
11 resolution of the notice of election to pursue dispute
12 resolution pending the outcome of the dispute resolution
13 process.

14 (c) If a mortgagor elects to waive dispute resolution or
15 fails to give notice within the time specified to the center for
16 alternative dispute resolution of the mortgagor's election to
17 pursue dispute resolution, the foreclosure process shall proceed
18 as provided by law.

19 **§667-E Dispute resolution process; requirements.** (a)
20 Parties to a dispute resolution process conducted pursuant to
21 this part shall consist of the mortgagor or the mortgagor's
22 representative and the mortgagee or the mortgagee's



1 representative; provided that any representative of the
2 mortgagee who participates in the dispute resolution shall be
3 authorized to negotiate a loan modification on behalf of the
4 mortgagee or shall have direct access by telephone or other
5 immediately available communications medium at all times during
6 the dispute resolution process to a person who is so authorized
7 to approve a negotiated settlement agreement. All parties may
8 be represented by counsel in the dispute resolution process;
9 provided that the mortgagor may be represented by a housing
10 counselor who is certified by the United States Department of
11 Housing and Urban Development.

12 (b) Thirty days prior to participating in a scheduled
13 dispute resolution session pursuant to this part, the mortgagor
14 shall have consulted with a certified housing counselor with a
15 local housing counseling agency approved by the United States
16 Department of Housing and Urban Development.

17 (c) Prior to a dispute resolution session scheduled
18 pursuant to this part, the mortgagor and the mortgagee shall
19 provide the center for alternative dispute resolution and the
20 other party with any information that the center for alternative
21 dispute resolution may request. Information required by this
22 subsection shall include financial and employment information to



1 be provided by the mortgagor; and loan information to be
2 provided by the mortgagee, including:

- 3 (1) Copies of the original mortgage agreement, and any
4 subsequent mortgage agreements and assignments;
- 5 (2) A copy of the promissory note, signed by both the
6 mortgagor and the mortgagee, including any
7 endorsements and allonges on the note; and
- 8 (3) Copies of any other documents that amended or altered
9 the terms of the original mortgage agreement that were
10 signed by the mortgagor and the mortgagee or any
11 successors or assigns of the mortgagor or the
12 mortgagee.

13 (d) A dispute resolution session pursuant to this part
14 shall take place at a site specified by the center for
15 alternative dispute resolution and shall consist of one meeting
16 of up to three hours in duration between the parties and the
17 neutral during which the parties shall present the dispute and
18 attempt to conclude the dispute resolution process. The neutral
19 may extend the time allowed for the dispute resolution at the
20 discretion of the neutral.

21 (e) If the mortgagee fails to attend the dispute
22 resolution, fails to comply with the requirements of this part



1 or the rules of the supreme court adopted pursuant to this part,
2 or participates through a representative that does not meet the
3 requirements of subsection (a), the neutral shall issue a report
4 noting unjustifiable noncompliance with the program
5 requirements. The mortgagor may file or record the report at
6 the bureau of conveyances or the land court, as appropriate.
7 Thereafter, neither the land court nor the bureau of conveyances
8 shall record a notice of sale or other conveyance document for
9 the subject property in connection with the related notice of
10 default and intention to foreclose.

11 (f) If the mortgagor fails to attend the dispute
12 resolution or fails to comply with the requirements of this part
13 or the rules of the supreme court adopted pursuant to this part,
14 the neutral shall issue a report noting unjustifiable
15 noncompliance with the program requirements. The mortgagee may
16 file or record the report at the bureau of conveyances or the
17 land court, as appropriate. Thereafter, the foreclosure process
18 shall resume along the timeline as it existed on the date before
19 the mortgagor elected dispute resolution, and may proceed as
20 otherwise provided by law. The mortgagee shall notify the
21 mortgagor of the recording date and document number of this
22 report and the new deadline date to cure default. The supreme



1 court shall adopt rules for penalties against mortgagors for
2 failure to comply with this part.

3 (g) If, despite the participation by both parties in the
4 dispute resolution process and compliance with the requirements
5 of this part and the rules of the supreme court adopted pursuant
6 to this part, the parties are not able to come to an agreement,
7 the neutral shall issue a report that the parties met the
8 program requirements. The mortgagee may file or record the
9 report at the bureau of conveyances or the land court, as
10 appropriate. Upon recording of the report pursuant to this
11 subsection, the foreclosure process shall resume along the
12 timeline as it existed on the date before the mortgagor elected
13 dispute resolution, and may proceed as otherwise provided by
14 law. The mortgagee shall notify the mortgagor of the recording
15 date and document number of this report and the new deadline
16 date to cure default.

17 (h) If the parties to a dispute resolution come to an
18 agreement to resolve the matters at issue in the dispute
19 resolution before the dispute resolution scheduled pursuant to
20 this section, the parties shall notify the neutral by the date
21 of the scheduled dispute resolution session. The neutral shall
22 thereafter issue a report that the parties have reached an



1 agreement outside of dispute resolution. The parties may file
2 or record the report at the bureau of conveyances or the land
3 court, as appropriate. No fees shall be refunded if the parties
4 come to an agreement prior to or outside of a dispute resolution
5 conducted pursuant to this part.

6 (i) The dispute resolution process shall conclude within
7 sixty days from the first scheduled meeting between the parties
8 to the dispute resolution and the neutral; provided that the
9 neutral shall have the authority to extend this period pursuant
10 to the rules of the supreme court adopted under this part.
11 Nothing in this part shall be construed to require the dispute
12 resolution process to take the full sixty days allotted to reach
13 a negotiated agreement.

14 **§667-F Outcome of dispute resolution.** (a) When the
15 parties to dispute resolution have complied with the
16 requirements of this part and the rules of the supreme court
17 adopted pursuant to this part and have reached an agreement, the
18 agreement shall be memorialized in a settlement agreement signed
19 by the parties and the neutral. The parties shall file or
20 record the settlement agreement with the land court or the
21 bureau of conveyances, as appropriate. The settlement agreement
22 shall be a contract between the parties and shall be enforceable



1 in a private contract action in a court of appropriate
2 jurisdiction in the event of breach by either party. If the
3 resolution document allows for foreclosure or other transfer of
4 the subject property, the land court or bureau of conveyances
5 shall record a notice of sale or other conveyance document upon
6 presentation by the mortgagee, as appropriate.

7 (b) The parties to a dispute resolution may enter into a
8 temporary modification agreement as an outcome of a dispute
9 resolution conducted pursuant to this part; provided that any
10 temporary modification agreements shall include an expiration
11 date, which shall be a date certain upon which the parties shall
12 have complied with their respective obligations under the
13 agreement. A temporary modification agreement shall be a
14 private contract memorialized, filed, or recorded with the land
15 court or the bureau of conveyances, as appropriate, and shall be
16 enforceable according to subsection (a).

17 **§667-G Confidentiality.** Personal financial information
18 and other sensitive personal information disclosed in the course
19 of mandatory mortgage foreclosure dispute resolution pursuant to
20 this part shall be confidential and shall not be subject to
21 public disclosure.



1 **§667-H Neutral qualifications.** The supreme court shall
2 adopt rules for qualifications and training of neutrals for
3 mandatory mortgage foreclosure dispute resolution pursuant to
4 this part; provided that neutrals shall possess sufficient
5 knowledge in the areas of law, real estate, or finance and shall
6 receive sufficient training to be able to effectuate the
7 purposes of this part.

8 **§667-I Fees.** The center for alternative dispute
9 resolution may charge a fee not to exceed \$500 for dispute
10 resolution services provided pursuant to this part. Any fee for
11 dispute resolution services shall be divided equally between the
12 mortgagee and the mortgagor. All fees collected pursuant to
13 this section shall be deposited into the mortgage foreclosure
14 dispute resolution special fund established by section 667-L.
15 The supreme court shall adopt rules for the allocation of
16 incidental costs, including but not limited to photocopying,
17 faxing, and long distance telephone charges.

18 **§667-J Applicability.** This part shall apply to
19 foreclosures conducted under part II by a power of sale of
20 residential real property that is occupied by one or more
21 mortgagors as a primary residence; provided that this part shall
22 not apply to actions by an association to foreclose on a lien



1 for amounts owed to the association that arise under a
2 declaration filed pursuant to chapter 514A or 514B, or to a
3 mortgagor who has previously participated in dispute resolution
4 under this part for the same property on the same mortgage loan.

5 **§667-K Rules.** In addition to the rules to be established
6 pursuant to sections 667-D(b), 667-E(f), 667-H, 667-I, and 667-
7 L, the supreme court may adopt rules for the administration of
8 this part, including rules to:

- 9 (1) Ensure that dispute resolution occurs in an orderly
10 and timely manner;
- 11 (2) Require each party to provide any information that the
12 neutral deems necessary;
- 13 (3) Create, establish, or recommend any forms and
14 informational materials to assist in the timely and
15 accurate filing of the neutral reports with the bureau
16 of conveyances or the land court, as appropriate;
- 17 (4) Require the use of any formula for determining whether
18 any workable loan modification agreement may be
19 reached between the parties;
- 20 (5) Protect the dispute resolution process from abuse and
21 ensure that each party complies with this part and the



- 1 rules adopted by the supreme court pursuant to this
2 part;
- 3 (6) Establish qualifications and training requirements for
4 neutrals;
- 5 (7) Protect from disclosure personal financial information
6 and other sensitive personal information obtained in
7 the course of foreclosure dispute resolution from
8 disclosure;
- 9 (8) Establish a procedure for data collection and
10 evaluation of the mandatory mortgage foreclosure
11 dispute resolution program, the state's mortgage
12 market, and the foreclosure process in general; and
- 13 (9) Establish a procedure for determining the interests of
14 junior lienholders and whether they should be included
15 as parties to the dispute resolution.

16 **§667-L. Mandatory mortgage foreclosure dispute resolution**
17 **special fund.** (a) There is established outside of the state
18 treasury a special fund to be known as the mandatory mortgage
19 foreclosure dispute resolution special fund to be administered
20 by the supreme court to implement the mandatory dispute
21 resolution in mortgage foreclosure proceedings required by this
22 part. The fund shall consist of contributions from the sources



1 identified in subsections (c) and (d). Interest earned from the
2 balance of the fund shall become a part of the fund. The
3 supreme court shall adopt rules regarding the distribution of
4 moneys from the fund.

5 (b) The supreme court may allow expenditure of moneys from
6 the fund directly by the center for alternative dispute
7 resolution.

8 (c) All persons who bring an action in the circuit court
9 for foreclosure pursuant to section 667-1, who record an
10 affidavit in the land court pursuant to section 501-118, or who
11 record a conveyance document in the bureau of conveyances for a
12 property subject to a nonjudicial power of sale foreclosure
13 shall pay an additional fee of \$100 for deposit into the
14 mortgage foreclosure dispute resolution special fund.

15 (d) Fees for mandatory mortgage foreclosure dispute
16 resolution charged pursuant to section 667-I shall be deposited
17 into the mandatory mortgage foreclosure dispute resolution
18 special fund."

19 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
20 amended by adding three new sections to part II to be
21 appropriately designated and to read as follows:



1 "§667-M Conversion; residential property; conditions. (a)

2 An owner-occupant of a residential property that is being
3 foreclosed nonjudicially under this part may convert the action
4 to a judicial foreclosure under the following conditions:

5 (1) A complaint conforming to section 667-N shall be filed
6 with the circuit court in the circuit where the
7 residential property is located, stating that the
8 owner-occupant of the property elects to convert the
9 nonjudicial foreclosure to a judicial foreclosure
10 proceeding;

11 (2) The complaint described in paragraph (1) shall be
12 filed with the circuit court no later than thirty days
13 after the notice of default and intention to foreclose
14 is served on the owner-occupant as required by section
15 667-22;

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



1 limitation co-obligors and guarantors, shall file a
2 statement in the circuit court action that they agree
3 to submit themselves to the judicial process and the
4 jurisdiction of the circuit court. 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 (4) The filing of the complaint shall automatically stay
11 the nonjudicial foreclosure action unless and until
12 the judicial proceeding has been dismissed;

13 (5) The person filing the complaint shall have an
14 affirmative duty to promptly notify the Hawaii
15 attorney who is handling the nonjudicial foreclosure
16 about the filing of the conversion;

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



1 (7) Notwithstanding chapter 607, the fee for filing the
2 complaint shall be not more than \$525; of which \$250
3 shall be deposited into the mandatory mortgage
4 foreclosure dispute resolution fund established under
5 section 667-L.

6 (b) This section shall not apply to nonjudicial
7 foreclosures of association liens that arise under a declaration
8 filed pursuant to chapter 514A or 514B.

9 **§667-N Complaint; residential property; required contents.**

10 The complaint authorized under section 667-M shall contain at a
11 minimum the following:

12 (1) A caption setting forth the name of the court, the
13 title of the action, and the file number. The title
14 of the action shall include the names of the filing
15 party as plaintiff and the foreclosing party as the
16 defendant;

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

19 (3) The address or tax map key number and the certificate
20 of title or transfer certificate of title number if
21 within the land court's jurisdiction, of the property
22 subject to the foreclosure action;



- 1 (4) A statement identifying all other owner-occupants of
2 the residential property whose interests are pledged
3 or otherwise encumbered by the mortgage that is being
4 foreclosed and all persons who have signed the
5 promissory note or other instrument evidencing the
6 debt secured by the mortgage that is being foreclosed,
7 including without limitation co-obligors and
8 guarantors;
- 9 (5) A certification under penalty of perjury that the
10 filing party is an owner-occupant of the subject
11 property and seeks to convert the nonjudicial
12 foreclosure to a judicial proceeding;
- 13 (6) A statement certifying that the filing party served a
14 copy of the complaint on the attorney identified in
15 the notice of default and intention to foreclose
16 either by personal delivery at, or by postage prepaid
17 United States mail to, the address of the attorney as
18 set forth in the notice of default and intention to
19 foreclose; and
- 20 (7) A copy of the notice of default and intention to
21 foreclose that was served on the filing party and for



1 which the filing party is seeking to convert to a
2 judicial proceeding.

3 §667-0 Notice of default and intention to foreclose;
4 residential property; required statement on conversion. (a)

5 The notice of default and intention to foreclose that is served
6 as required under section 667-22 shall include, in addition to
7 the contents required under section 667-22, a statement printed
8 in not less than fourteen-point font as follows:

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



1 OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED
2 FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE
3 THE PROPERTY IS LOCATED WITHIN THIRTY DAYS AFTER
4 SERVICE OF THIS NOTICE.

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

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



1 A FORECLOSING LENDER WHO COMPLETES A
2 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY
3 SHALL BE PROHIBITED UNDER HAWAII LAW FROM
4 PURSUIING A DEFICIENCY JUDGMENT AGAINST AN OWNER-
5 OCCUPANT WHO DOES NOT OWN A FEE SIMPLE OR
6 LEASEHOLD INTEREST IN ANY OTHER REAL PROPERTY,
7 UNLESS THE DEBT IS SECURED BY OTHER COLLATERAL,
8 OR AS OTHERWISE PROVIDED BY LAW. IF THIS ACTION
9 IS CONVERTED TO A JUDICIAL PROCEEDING, HOWEVER,
10 THEN ALL REMEDIES AVAILABLE TO A LENDER MAY BE
11 ASSERTED, INCLUDING THE RIGHT TO SEEK A
12 DEFICIENCY JUDGMENT."

13 (b) The statement required by this section shall not be
14 required to be included in the public notice of public sale
15 published pursuant to section 667-27."

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

19 "**§667-P Bar against deficiency judgments; owner-occupant**
20 **of residential property.** The mortgagee or other person who
21 completes, pursuant to this part, the nonjudicial foreclosure of
22 a mortgage or other lien on residential property shall not be



1 entitled to pursue or obtain a deficiency judgment against an
2 owner-occupant of the residential property who, at the time the
3 notice of default and intention to foreclose is served, does
4 not have a fee simple or leasehold ownership interest in any other
5 real property unless the debt is secured by other collateral;
6 provided, however, that nothing in this section shall prohibit any
7 other mortgagee or person who holds a lien on the residential
8 property subject to the nonjudicial foreclosure, whose lien is
9 subordinate to the mortgage being foreclosed and is extinguished
10 by the nonjudicial foreclosure sale, from pursuing a monetary
11 judgment against that owner-occupant.

12 **§667-Q Foreclosure notice.** Notwithstanding any law or
13 agreement to the contrary, any person who forecloses on a
14 property under this part within a planned community, a
15 condominium apartment or unit, or an apartment in a cooperative
16 housing project shall notify, by way of registered or certified
17 mail, the board of directors of the planned community
18 association, the association of owners of the condominium
19 project, or the cooperative housing project in which the
20 property to be foreclosed is located, of the foreclosure at the
21 time foreclosure proceedings are begun. The notice, at a
22 minimum, shall identify the property, condominium apartment or



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

10 **§667-R Prohibited conduct.** It shall be a prohibited
11 practice for any foreclosing mortgagee to engage in any of the
12 following practices:

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



- 1 faith for more than forty-five days after the
2 completion of the public sale;
- 3 (5) Completing nonjudicial foreclosure proceedings during
4 "short sale" escrows for bid prices that are less than
5 a purchaser's offer to purchase;
- 6 (6) Completing nonjudicial foreclosure proceedings during
7 bona fide loan modification negotiations with the
8 mortgagor; or
- 9 (7) Completing nonjudicial foreclosure proceedings against
10 a mortgagor who has been accepted or is being
11 evaluated for consideration into a federal loan
12 modification program before obtaining a certificate or
13 other documentation confirming that the mortgagor is
14 no longer eligible or an active participant of that
15 federal program.

16 **§667-S Unfair or deceptive act or practice.** Any
17 foreclosing mortgagee who violates this part shall be guilty of
18 an unfair or deceptive act or practice under section 480-2."

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-T Invalid 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
21 shall be described in the affiliate statement filed under both
22 subsection (a) and section 454M-5(a)(4)(F).



1 §667-U Actions and communications with the mortgagor in
2 connection with a foreclosure. Once a foreclosure has been
3 initiated under either part I or part II, a foreclosing
4 mortgagee shall be estopped from denying liability for any
5 action or communication respecting the subject property that is
6 received by the mortgagor from a mortgage servicer, a lender,
7 the foreclosing mortgagee, or the foreclosing mortgagee's
8 affiliate as named in the affiliate statement filed with the
9 bureau of conveyances pursuant to section 667-T. This section
10 shall also apply to any actions and communications made by the
11 agents, employees, or representatives of the lender, foreclosing
12 mortgagee, mortgage servicer, or foreclosing mortgagee's
13 affiliate.

14 §667-V Suspension of foreclosure actions by junior
15 lienholders. Upon initiation of a foreclosure action in part I
16 or part II by a foreclosing mortgagee as defined in section 667-
17 21(b), no junior lienholder shall be permitted to initiate or
18 continue with a foreclosure until the foreclosure initiated by
19 the foreclosing mortgagee has been concluded by either a
20 judgment issued by a court pursuant to section 667-1, the
21 recording of an affidavit after public sale pursuant to section
22 667-33, or the filing of a settlement agreement under the



1 mandatory mortgage foreclosure dispute resolution provisions of
2 section 667-F; provided that a junior lienholder shall be
3 permitted to initiate or continue with a foreclosure if the
4 resolution document allows for foreclosure."

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

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

12 SECTION 7. 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
21 July 1 for licensure for the following year.



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

- 3 (1) The applicant's form and place of organization;
4 (2) The applicant's tax identification number; and
5 (3) The applicant's proposed method of doing business.

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

14 (c) A mortgage servicer licensed under this chapter may
15 voluntarily cease business and surrender its license by giving
16 written notice to the commissioner of its intent to surrender
17 its mortgage servicer license. Written notice required by this
18 subsection shall be given to the commissioner not fewer than
19 thirty days before the surrender of the license and shall
20 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 the knowledge and authority required to communicate
4 with the commissioner regarding all matters relating
5 to the licensee during the period that it was licensed
6 pursuant to this chapter;
- 7 (3) A statement of the reason or reasons for surrender;
- 8 (4) The original license issued to the mortgage servicer
9 pursuant to this chapter; 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 provided on the written notice to the
20 commissioner required by this subsection; provided that if a
21 mortgage servicer is required to assign, sell, or transfer the
22 servicing of any loans, the voluntary surrender of the mortgage



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

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

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

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

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

12 (3) Disclose to the commissioner in the application and
13 yearly renewal a complete, current schedule of the
14 ranges of costs and fees it charges borrowers for its
15 servicing-related activities; ~~and~~

16 (4) File with ~~[the commissioner upon request]~~ its yearly
17 renewal statement a report in a form and format
18 acceptable to the director detailing the servicer's
19 activities in this State, including:

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



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



1 mortgage servicer has actively serviced at least
2 mortgage loans in the State within the
3 previous calendar year; provided that nothing in this
4 section shall prohibit a mortgagee as defined by
5 section 667-21 or a mortgage servicer from contracting
6 with a licensee that maintains an office in this State
7 in conformity with this section for the purposes of
8 addressing consumer inquiries or complaints and
9 accepting service of process."

10 SECTION 9. Section 454M-10, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~+~~**\$454M-10**~~+~~ **Penalty.** Any person who violates any
13 provision of this chapter may be subject to an administrative
14 fine of at least \$1,000 and not more than [~~\$5,000~~ \$7,000 for
15 each violation~~-~~; provided that \$1,000 of the fine shall be
16 deposited into the mandatory mortgage foreclosure dispute
17 resolution fund under section 667-L."

18 SECTION 10. Section 514A-90, 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
22 regular monthly common assessments that were assessed during the



1 [~~six~~] twelve months immediately preceding the completion of the
2 judicial or nonjudicial power of sale foreclosure. In no event
3 shall the amount of the special assessment exceed the sum of
4 [~~\$3,600-~~] \$10,000."

5 SECTION 11. Section 514B-146, Hawaii Revised Statutes, is
6 amended by amending subsection (h) to read as follows:

7 "(h) The amount of the special assessment assessed under
8 subsection (g) shall not exceed the total amount of unpaid
9 regular monthly common assessments that were assessed during the
10 [~~six~~] twelve months immediately preceding the completion of the
11 judicial or nonjudicial power of sale foreclosure. In no event
12 shall the amount of the special assessment exceed the sum of
13 [~~\$3,600-~~] \$10,000."

14 SECTION 12. Section 613-2, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) There is established within the judiciary the center
17 for alternative dispute resolution. The center shall facilitate
18 the effective, timely, and voluntary resolution of disputes.
19 Through these resolutions, it shall help reduce public and
20 private costs of litigation and increase satisfaction with the
21 justice system. The center shall accomplish its purposes by:



1 (1) Providing, where feasible and agreed to by the
2 parties, the consultative resources and technical
3 assistance needed to achieve voluntary resolutions for
4 cases that affect the public interest or the work of
5 state and county agencies. These cases shall include
6 but not be limited to:

7 (A) Public disputes involving actual or threatened
8 court actions over the allocation or management
9 of public resources or the siting of public
10 facilities;

11 (B) Complex litigation cases in which a court or a
12 regulatory or administrative agency has
13 determined that the dispute involves multiple
14 parties or formidable technical, procedural, or
15 factual issues, or both;

16 (C) Policy roundtables in which the center, at the
17 request of an executive, legislative, or judicial
18 decisionmaker, convenes and chairs advisory
19 discussions on matters pertaining to standards or
20 rules; [and]

21 (D) Foreclosures subject to part of chapter 667;
22 and



1 [~~(D)~~] (E) Other cases directly referred by judges,
2 legislators, agency heads, or appointed
3 government officials;

4 (2) Promoting in a systematic manner the appropriate use
5 of alternative dispute resolution; and

6 (3) Disseminating to government agencies and to the
7 community at large up-to-date information on the
8 methods and applications of alternative dispute
9 resolution."

10 SECTION 13. Chapter 667, Hawaii Revised Statutes, is
11 amended by amending the title of part I to read as follows:

12 "PART I. FORECLOSURE BY ACTION [~~OR~~
13 ~~FORECLOSURE BY POWER OF SALE]~~"

14 SECTION 14. Section 667-5.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§667-5.5 Foreclosure notice.** Notwithstanding any law or
17 agreement to the contrary, any person who forecloses on a
18 property under this part within a planned community, a
19 condominium apartment or unit, or an apartment in a cooperative
20 housing project shall notify, by way of registered or certified
21 mail, the board of directors of the planned community
22 association, the association of owners of the condominium



1 project, or the cooperative housing project in which the
2 property to be foreclosed is located, of the foreclosure at the
3 time foreclosure proceedings are begun. The notice, at a
4 minimum, shall identify the property, condominium apartment or
5 unit, or cooperative apartment [~~which~~] that is the subject of
6 the foreclosure and identify the name or names of the person or
7 persons bringing foreclosure proceedings. This section shall
8 not apply when the planned community association, condominium
9 association of owners, or cooperative housing corporation is a
10 party in a foreclosure action. This section shall not affect
11 civil proceedings against parties other than the planned
12 community association, association of owners, or cooperative
13 housing corporation."

14 SECTION 15. Section 667-10, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§667-10 Power unaffected by transfer; surplus after sale.**
17 No sale or transfer by the mortgagor shall impair or annul any
18 right or power of attorney given in the mortgage to the
19 mortgagee to sell or transfer the mortgaged property, as
20 attorney or agent of the mortgagor, except as otherwise provided
21 by chapters 501 and 502. When public sale is made of the
22 mortgaged property under this [~~chapter,~~] part, the remainder of



1 the proceeds, if any, shall be paid over to the owner of the
2 mortgaged property, after deducting the amount of claim and all
3 expenses attending the same."

4 SECTION 16. Chapter 667, Hawaii Revised Statutes, is
5 amended by amending the title of part II to read as follows:

6 "[~~}]PART II.[~~}]—ALTERNATE~~] **POWER OF SALE FORECLOSURE PROCESS**"~~

7 SECTION 17. Section 667-21, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[~~}]§667-21[~~}]—Alternate power~~] Power of sale foreclosure
10 **process; definitions.** (a) The process in this part is [~~an~~
11 ~~alternative power of sale process to the foreclosure by action~~
12 ~~and the foreclosure by power of sale in part I.] a power of sale
13 foreclosure process.~~~~~~

14 (b) As used in this part:

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

17 "Borrower" means the borrower, maker, cosigner, or
18 guarantor under a mortgage agreement.

19 "Foreclosing mortgagee" means the mortgagee that intends to
20 conduct a power of sale foreclosure; provided that the mortgagee
21 is a federally insured bank, a federally insured savings and
22 loan association, a federally insured savings bank, a depository



1 financial services loan company, a nondepository financial
2 services loan company, a credit union insured by the National
3 Credit Union Administration, a bank holding company, a foreign
4 lender as defined in section 207-11, or an institutional
5 investor as defined in section 454-1.

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

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

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



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

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

8 "Mortgaged property" means the property that is subject to
9 the lien of the mortgage.

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

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

17 "Nonjudicial foreclosure" means foreclosure under the power
18 of sale foreclosure process under part II.

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



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

4 (1) Owns an interest in the residential property, and the
5 interest is encumbered by the mortgage being
6 foreclosed; and

7 (2) The residential property is and has been the person's
8 primary residence for a continuous period of not less
9 than one hundred eighty days immediately preceding the
10 date on which the notice is served.

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

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

21 "Record" or "recorded" means a document is recorded or
22 filed with the office of the assistant registrar of the land



1 court under chapter 501 or recorded with the registrar of
2 conveyances under chapter 502, or both, as applicable.

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

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

9 SECTION 18. Section 667-22, Hawaii Revised Statutes, is
10 amended to read as follows:

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

- 19 (1) The name and address of the current mortgagee;
20 (2) The name and last known address of the mortgagor, the
21 borrower, and any guarantor;



- 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 if the default is
7 a monetary default, an itemization of the delinquent
8 amount shall be given;
- 9 (5) The action that must be taken to cure the default,
10 including the amount to cure the default, together
11 with the estimated amount of the foreclosing
12 mortgagee's attorney's fees and costs, and all other
13 fees and costs estimated to be incurred by the
14 foreclosing mortgagee related to the default by the
15 deadline date;
- 16 (6) The date by which the default must be cured, which
17 deadline date shall be at least [~~sixty~~] ninety days
18 after the date of the notice of default[+] and
19 intention to foreclose;
- 20 (7) That if the default is not cured by the deadline date
21 stated in the notice of default[+] and intention to
22 foreclose, the entire unpaid balance of the moneys



1 owed to the mortgagee under the mortgage agreement
2 will be due, that the mortgagee intends to conduct a
3 power of sale foreclosure to sell the mortgaged
4 property at a public sale without any court action and
5 without going to court, and that the mortgagee or any
6 other person may acquire the mortgaged property at the
7 public sale; [~~and~~]

8 (8) The name, address, [~~including~~] electronic address, and
9 telephone number of the attorney who is representing
10 the foreclosing mortgagee; provided that the attorney
11 shall be licensed to practice law in the State and
12 physically located in the State[~~-~~]; and

13 (9) Notice of the right of the mortgagor to elect to
14 participate in a dispute resolution process as
15 required by part .

16 (b) The notice of default and intention to foreclose shall
17 also contain wording substantially similar to the following in
18 all capital letters[~~-~~] and printed in not less than fourteen-
19 point font:

20 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE
21 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY



1 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
2 AND WITHOUT GOING TO COURT.

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

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

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



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

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

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

17 (c) The notice of default and intention to foreclose shall
18 include:

19 (1) A copy of the original mortgage agreement, and copies
20 of any subsequent mortgage agreements and assignments;



1 (2) A copy of the promissory note, signed by both the
2 mortgagor and the mortgagee, including any
3 endorsements and allonges on the note; and

4 (3) A copy of any other documents that amended or altered
5 the terms of the original mortgage agreement that were
6 signed by the mortgagor and the mortgagee or any
7 successors or assigns of the mortgagor or the
8 mortgagee.

9 (d) The notice of default and intention to foreclose shall
10 also include contact information for local housing counseling
11 agencies approved by the United States Department of Housing and
12 Urban Development.

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

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

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



- 1 (3) The state director of taxation;
- 2 (4) The director of finance of the county where the
- 3 mortgaged property is located; and
- 4 (5) Any other person entitled to receive notice under
- 5 ~~[section 667-5.5.]~~ this part."

6 SECTION 19. Section 667-23, Hawaii Revised Statutes, is

7 amended to read as follows:

8 " ~~[§667-23]~~ **Recordation of notice of default~~[.]~~ and**

9 **intention to foreclose.** Before the deadline date in the notice

10 of default~~[.]~~ and intention to foreclose, the notice ~~[of~~

11 ~~default]~~ shall be recorded in a recordable form ~~[shall be~~

12 ~~recorded]~~ in a manner similar to recordation of notices of

13 pendency of action under section 501-151 or section 634-51, or

14 both, as applicable. The recorded notice of default and

15 intention to foreclose shall have the same effect as a notice of

16 pendency of action. From and after the recordation of the

17 notice of default~~[.]~~ and intention to foreclose, any person who

18 becomes a purchaser or encumbrancer of the mortgaged property

19 shall be deemed to have constructive notice of the power of sale

20 foreclosure and shall be bound by the foreclosure."

21 SECTION 20. Section 667-24, Hawaii Revised Statutes, is

22 amended to read as follows:



1 " ~~[+]~~ §667-24 ~~[+]~~ Cure of default. (a) If the default is
2 cured as required by the notice of default ~~[7]~~ and intention to
3 foreclose, or if the parties have reached a settlement
4 agreement, the foreclosing mortgagee shall rescind the notice of
5 default ~~[7]~~ and intention to foreclose. Within fourteen days of
6 the date of the cure ~~[7]~~ or a settlement agreement reached by the
7 parties, the foreclosing mortgagee shall so notify any person
8 who was served with the notice of default ~~[7]~~ and intention to
9 foreclose. If the notice of default and intention to foreclose
10 was recorded, a release of the notice of default and intention
11 to foreclose shall be recorded.

12 (b) If the default is not cured, as required by the notice
13 of default ~~[7]~~ and intention to foreclose or if the parties have
14 not reached a settlement agreement pursuant to part , the
15 foreclosing mortgagee, without filing a court action and without
16 going to court, may foreclose the mortgage under power of sale
17 to sell the mortgaged property at a public sale."

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

20 "(b) The public sale of the mortgaged property shall be
21 held only in the county where the mortgaged property is
22 located~~[. However, if the borrower, the mortgagor, and the~~



1 ~~foreclosing mortgagee all agree in writing, the public sale may~~
2 ~~be held in a different county in the State.];~~ provided that the
3 public sale shall be held only on grounds or at facilities under
4 the administration of the State, as follows:

- 5 (1) At the state capitol, for a public sale of mortgaged
6 property located in the city and county of Honolulu;
7 (2) At a state facility in Hilo, for a public sale of
8 mortgaged property located in the eastern portion of
9 the county of Hawaii;
10 (3) At a state facility in Kona, for a public sale of
11 mortgaged property located in the western portion of
12 the county of Hawaii;
13 (4) At a state facility in the county seat of Maui, for a
14 public sale of mortgaged property located in the
15 county of Maui; and
16 (5) At a state facility in the county seat of Kauai, for a
17 public sale of mortgaged property located in the
18 county of Kauai;
19 as designated by the department of accounting and general
20 services; provided further that no public sale shall be held on
21 grounds or at facilities under the administration of the



1 judiciary. The public sale shall be held during business hours
2 on a business day."

3 SECTION 22. Section 667-26, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

13 SECTION 23. Section 667-27, Hawaii Revised Statutes, is
14 amended as follows:

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

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

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

19 (2) The dates and times of the two open houses of the
20 mortgaged property, or if there will not [tø] be any
21 open houses, the public notice shall so state;



- 1 (3) The unpaid balance of the moneys owed to the mortgagee
- 2 under the mortgage agreement;
- 3 (4) A description of the mortgaged property, including the
- 4 address [~~or description of the location of the~~
- 5 ~~mortgaged property,~~] and the tax map key number of the
- 6 mortgaged property;
- 7 (5) The name of the mortgagor and the borrower;
- 8 (6) The name of the foreclosing mortgagee;
- 9 (7) The name of any prior or junior creditors having a
- 10 recorded lien on the mortgaged property before the
- 11 recordation of the notice of default and intention to
- 12 foreclose under section 667-23;
- 13 (8) The name, the address in the State, and the telephone
- 14 number in the State of the person in the State
- 15 conducting the public sale; [~~and~~]
- 16 (9) The terms and conditions of the public sale[~~-~~]; and
- 17 (10) An estimate of the opening bid."

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

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

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

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

22 sale of the mortgaged property:



- 1 (1) Mailed or delivered to the mortgagor and the borrower
2 at their respective last known addresses;
- 3 (2) Mailed or delivered to any prior or junior creditors
4 having a recorded lien on the mortgaged property
5 before the recordation of the notice of default and
6 intention to foreclose under section 667-23;
- 7 (3) Mailed or delivered to the state director of taxation;
- 8 (4) Mailed or delivered to the director of finance of the
9 county where the mortgaged property is located;
- 10 (5) Posted on the mortgaged property or on such other real
11 property of which the mortgaged property is a part;
12 and
- 13 (6) Mailed or delivered to any other person entitled to
14 receive notice under section [~~667-5.5.~~] 667-Q.
- 15 (d) The foreclosing mortgagee shall have the public notice
16 of the public sale printed in not less than 7-point font and
17 published in the classified section of a daily newspaper [e#]
18 having the largest general circulation expressly in the county
19 where the mortgaged property is located[-]; provided that for
20 property located in a county with a population of more than
21 100,000 but less than 200,000, the public notice shall be
22 published in the newspaper having the largest general



1 circulation expressly in the western or eastern half of the
2 county, as the case may be, in which the property is located.

3 The public notice shall be published once each week for three
4 consecutive weeks (three publications). The public sale shall
5 take place no sooner than fourteen days after the date of the
6 publication of the third public notice advertisement."

7 SECTION 24. Section 667-28, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) The public sale may be either postponed or canceled
10 by the foreclosing mortgagee. Notice of the postponement or the
11 cancellation of the public sale shall be[+

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

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

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

21 The new public notice shall state that it is a notice of a
22 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 real
5 property of which the mortgaged property is a part, and it shall
6 be mailed or delivered to the mortgagor, to the borrower, and to
7 any other person entitled to receive notice under section [~~667-~~
8 ~~27-~~] 667-22(e). Notwithstanding the foregoing, upon the fourth
9 postponement of every series of four consecutive postponements,
10 the foreclosing mortgagee shall follow all of the public notice
11 of public sale requirements of section 667-27, including the
12 requirements of mailing and posting under section 667-27(c) and
13 of publication under section 667-27(d)."

14 SECTION 25. Section 667-29, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~§~~667-29[~~§~~] **Authorized bidder; successful bidder.** Any
17 person, including the foreclosing mortgagee, shall be authorized
18 to bid for the mortgaged property at the public sale and to
19 purchase the mortgaged property. The highest bidder who meets
20 the requirements of the terms and conditions of the public sale
21 shall be the successful bidder. The public sale shall be
22 considered as being held when the mortgaged property is declared



1 by the foreclosing mortgagee as being sold to the successful
2 bidder. When the public sale is held, the successful bidder at
3 the public sale, as the purchaser, shall make a nonrefundable
4 downpayment to the foreclosing mortgagee of not less than ten
5 per cent of the highest successful bid price. If the successful
6 bidder is the foreclosing mortgagee or any other mortgagee
7 having a recorded lien on the mortgaged property before the
8 recordation of the notice of default and intention to foreclose
9 under section 667-23, the downpayment requirement may be
10 satisfied by offset and a credit bid up to the amount of the
11 mortgage debt."

12 SECTION 26. Section 667-31, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) After the purchaser completes the purchase by paying
15 the full purchase price and the costs for the purchase, the
16 mortgaged property shall be conveyed to the purchaser by a
17 conveyance document. The conveyance document shall be in a
18 recordable form and shall be signed by the foreclosing mortgagee
19 in the foreclosing mortgagee's name. The mortgagor or borrower
20 shall not be required to sign the conveyance document [~~on his or~~
21 ~~her own behalf~~]."



1 SECTION 27. Section 667-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§667-32[+] Affidavit after public sale; contents. (a)

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

6 (1) Stating that the power of sale foreclosure was made
7 pursuant to the power of sale provision in the
8 mortgage;

9 (2) Stating that the power of sale foreclosure was
10 conducted as required by this part;

11 (3) Summarizing what was done by the foreclosing
12 mortgagee;

13 (4) Attaching a copy of the recorded notice of default[+] and
14 intention to foreclose;

15 (5) Attaching a copy of the last public notice of the
16 public sale[-];

17 (6) Referencing the document number of the affiliate
18 statement filed at the bureau of conveyances as
19 required under section 667-T; and

20 (7) Stating the date of filing and any relevant
21 referencing information assigned by the division of
22 financial institutions to the statement filed with the



1 commissioner of financial institutions of the mortgage
2 servicer affiliation statement as required under
3 section 454M-5(a)(4)(F).

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

7 "(1) I am duly authorized to represent or act on behalf of
8 _____ (name of mortgagee) ("foreclosing
9 mortgagee") regarding the following power of sale
10 foreclosure. I am signing this affidavit in
11 accordance with the alternate power of sale
12 foreclosure law (Chapter 667, Part II, Hawaii Revised
13 Statutes);

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

16 (3) The power of sale foreclosure is of a mortgage made by
17 _____ (name of mortgagor)
18 ("mortgagor"), dated _____, and recorded in the
19 _____ (bureau of conveyances or office of
20 the assistant registrar of the land court) as
21 _____ (recordation information). The
22 mortgaged property is located at:



1 _____ (address or description of
 2 location) and is identified by tax map key number:
 3 _____. The legal description of the mortgaged
 4 property is attached as Exhibit "A". The name of the
 5 borrower, if different from the mortgagor, is
 6 _____ ("borrower");

7 (4) Pursuant to the power of sale provision of the
 8 mortgage, the power of sale foreclosure was conducted
 9 as required by the power of sale foreclosure law. The
 10 following is a summary of what was done:

11 (A) A notice of default and intention to foreclose
 12 was served on the mortgagor, the borrower, and
 13 the following person: _____. The
 14 notice of default and intention to foreclose was
 15 served on the following date and in the following
 16 manner: _____;

17 (B) The date of the notice of default and intention
 18 to foreclose was _____ (date). The deadline
 19 in the notice for curing the default was
 20 _____ (date), which deadline date was at
 21 least sixty days after the date of the notice;



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

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

(E) A public notice of the public sale was initially
published in the classified section of the
_____, a daily newspaper of
general circulation in the county where the
mortgaged property is located, once each week for
three consecutive weeks on the following dates:
_____. A copy of the affidavit of
publication for the last public notice of the
public sale is attached as Exhibit "2". The date
of the public sale was _____ (date). The
last publication was not less than fourteen days
before the date of the public sale;



- 1 (F) The public notice of the public sale was sent to
2 the mortgagor, to the borrower, to the state
3 director of taxation, to the director of finance
4 of the county where the mortgaged property is
5 located, and to the following:
6 _____ . The public notice was sent on
7 the following dates and in the following manner:
8 _____ . Those dates were after the
9 deadline date in the notice of default[~~r~~] and
10 intention to foreclose, and those dates were at
11 least sixty days before the date of the public
12 sale;
- 13 (G) The public notice of the public sale was posted
14 on the mortgaged property or on such other real
15 property of which the mortgaged property is a
16 part on _____ (date). That date was at
17 least sixty days before the date of the public
18 sale;
- 19 (H) Two public showings (open houses) of the
20 mortgaged property were held (or were not held
21 because the mortgagor did not cooperate);



1 (I) A public sale of the mortgaged property was held
 2 on a business day during business hours on:
 3 _____ (date), at _____ (time), at the
 4 following location: _____. The
 5 highest successful bidder was _____
 6 _____ (name) with the highest
 7 successful bid price of \$_____; and

8 (J) At the time the public sale was held, the default
 9 was not cured and there was no circuit court
 10 foreclosure action pending in the circuit where
 11 the mortgaged property is located; and

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

13 SECTION 28. Section 667-39, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "[+]§667-39[+] **Right to enforce this part.** (a) The
 16 foreclosing mortgagee, any other creditor having a recorded lien
 17 on the mortgaged property before the recordation of the notice
 18 of default and intention to foreclose under section 667-23, the
 19 borrower, and the mortgagor, may enforce this part by bringing
 20 an action in the circuit court of the circuit where the
 21 mortgaged property is located.



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

5 SECTION 29. Section 667-41, Hawaii Revised Statutes, is
6 amended to read as follows:

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



1 foreclosure as provided by law. These informational materials
2 shall fully and completely explain these remedies[+] in simple
3 and understandable terms."

4 SECTION 30. Section 667-5, Hawaii Revised Statutes, is
5 repealed.

6 [~~"§667-5 Foreclosure under power of sale; notice;~~
7 ~~affidavit after sale.~~ (a) ~~When a power of sale is contained in~~
8 ~~a mortgage, and where the mortgagee, the mortgagee's successor~~
9 ~~in interest, or any person authorized by the power to act in the~~
10 ~~premises, desires to foreclose under power of sale upon breach~~
11 ~~of a condition of the mortgage, the mortgagee, successor, or~~
12 ~~person shall be represented by an attorney who is licensed to~~
13 ~~practice law in the State and is physically located in the~~
14 ~~State. The attorney shall:~~

15 (1) ~~Give notice of the mortgagee's, successor's, or~~
16 ~~person's intention to foreclose the mortgage and of~~
17 ~~the sale of the mortgaged property, by publication of~~
18 ~~the notice once in each of three successive weeks~~
19 ~~(three publications), the last publication to be not~~
20 ~~less than fourteen days before the day of sale, in a~~
21 ~~newspaper having a general circulation in the county~~
22 ~~in which the mortgaged property lies; and~~



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

3 ~~(b) Copies of the notice required under subsection (a)~~
4 ~~shall be:~~

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

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

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

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

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

21 ~~(d) Any sale, of which notice has been given as aforesaid,~~
22 ~~may be postponed from time to time by public announcement made~~



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

12 ~~(e) The affidavit and copy of the notice shall be recorded~~
13 ~~and indexed by the registrar, in the manner provided in chapter~~
14 ~~501 or 502, as the case may be.~~

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

17 SECTION 31. Section 667-5.7, Hawaii Revised Statutes, is
18 repealed.

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



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

3 SECTION 32. Section 667-6, Hawaii Revised Statutes, is
4 repealed.

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



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

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

13 SECTION 33. Section 667-7, Hawaii Revised Statutes, is
14 repealed.

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

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



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

4 SECTION 34. Section 667-8, Hawaii Revised Statutes, is
5 repealed.

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

14 SECTION 35. Section 667-9, Hawaii Revised Statutes, is
15 repealed.

16 ~~["**§667-9 Dower barred, when.** If the mortgage was executed~~
17 ~~by a man having at the time no lawful wife, or if the mortgagor~~
18 ~~being married, his wife joined in the deed in token of her~~
19 ~~release of dower, the sale of the property in the mode aforesaid~~
20 ~~shall be effectual to bar all claim and possibility of dower in~~
21 ~~the property."]~~



1 SECTION 36. Section 667-34, Hawaii Revised Statutes, is
2 repealed.

3 [~~"[§667-34] Foreclosure sale; conclusive presumptions.~~

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

20 SECTION 37. Section 667-35, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§667-35] Appeal to circuit court.~~ The borrower, the
2 mortgagor, and any creditor having a recorded lien on the
3 mortgaged property before the recordation of the notice of
4 default under section 667-23, shall have the right to file an
5 appeal in the circuit court where the mortgaged property is
6 located to contest the presumptions set forth in section 667-34,
7 and the statements contained in the affidavit required by
8 section 667-32. No appeal shall be filed later than thirty days
9 after the recordation of the affidavit. Failure to timely
10 appeal shall result in the statements in the affidavit and the
11 presumptions set forth in section 667-34 becoming conclusive in
12 accordance with the terms of that section."]

13 SECTION 38. Section 667-37, Hawaii Revised Statutes, is
14 repealed.

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



1 ~~sale is held. While that circuit court foreclosure action is~~
2 ~~pending, the power of sale foreclosure process shall be~~
3 ~~stayed."]~~

4 SECTION 39. Section 667-38, Hawaii Revised Statutes, is
5 repealed.

6 ["~~§667-38~~ **Recordation, full satisfaction of debt by**
7 **borrower.** ~~The recordation of both the conveyance document and~~
8 ~~the affidavit shall operate as full satisfaction of the debt~~
9 ~~owed by the borrower to the foreclosing mortgagee even if the~~
10 ~~foreclosing mortgagee receives nothing from the sale proceeds,~~
11 ~~unless the debt is secured by other collateral, or except as~~
12 ~~otherwise provided by law. The debts of other lien creditors~~
13 ~~are unaffected except as provided in this part."]~~

14 SECTION 40. Section 667-42, Hawaii Revised Statutes, is
15 repealed.

16 ["~~§667-42~~ **Application of this part.** ~~The requirements of~~
17 ~~this part shall apply only to new mortgages, loans, agreements,~~
18 ~~and contracts containing power of sale foreclosure language~~
19 ~~executed by the borrowers or mortgagors after July 1, 1999."]~~

20 SECTION 41. Upon the effective date of this Act, the
21 judiciary is requested to consider creating and adopting a form



1 for the conversion complaint established under section 3 of this
2 Act.

3 SECTION 42. On the effective date of this Act, there shall
4 be a forty-five day phase-in period ending on August 14, 2050,
5 in which any owner-occupant, as defined under section 667-21(b),
6 Hawaii Revised Statutes, who is undergoing a nonjudicial
7 foreclosure for which the mortgagee's affidavit has not yet been
8 filed pursuant to sections 667-5 or 667-32, Hawaii Revised
9 Statutes, may elect to convert to a judicial foreclosure under
10 section 3 of this Act. An owner-occupant who elects to convert
11 a nonjudicial foreclosure to a judicial foreclosure during the
12 phase-in period:

13 (1) Shall submit with the complaint as required under
14 section 667-N, Hawaii Revised Statutes, copies of any
15 notices of default received from the mortgagee and
16 published notices of the public sale made pursuant to
17 section 667-5, Hawaii Revised Statutes, in lieu of the
18 notice of default and intention to foreclose as
19 provided by section 667-22, Hawaii Revised Statutes;
20 and

21 (2) Shall not be subject to the deadline described in
22 section 667-M(a)(2), Hawaii Revised Statutes;



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

4 SECTION 43. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so
6 much thereof as may be necessary for fiscal year 2011-2012 to be
7 deposited into the mortgage foreclosure dispute resolution
8 special fund established pursuant to section 667-L, Hawaii
9 Revised Statutes, and used to pay for the initial costs
10 associated with establishing a dispute resolution program at the
11 center for alternative dispute resolution for use by mortgagors
12 and mortgagees to avoid or mitigate the damages of foreclosure.

13 The sum appropriated shall be expended by the judiciary for
14 the purposes of this Act; provided that upon receipt of
15 sufficient moneys to accomplish its purpose, the mortgage
16 foreclosure dispute resolution special fund shall reimburse the
17 general fund for the appropriation made pursuant to this Act.

18 SECTION 44. In codifying the new sections added by
19 sections 2, 3, 4, and 5 of this Act, the revisor of statutes
20 shall substitute appropriate section numbers for the letters
21 used in designating the new sections in this Act.



1 SECTION 45. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 46. This Act shall take effect on July 1, 2050;
4 provided that:

5 (1) Section 2 shall take effect upon the earlier of
6 January 1, 2051 or the date that the chief justice of
7 the supreme court issues a written declaration that
8 the judiciary is implementing section 2 of this Act;

9 (2) Sections 2, 10, and 11 shall be repealed on July 1,
10 2053, and sections 514A-90 and 514B-146, Hawaii
11 Revised Statutes, shall be reenacted in the form in
12 which they read on June 30, 2053; and

13 (3) Section 3 shall be repealed on December 31, 2051.



Report Title:

Mortgage Foreclosures

Description:

Repeals the old nonjudicial foreclosure process. Clarifies the new nonjudicial foreclosure process. Strengthens laws regarding mortgage servicers. Broadens the duties of the Center for Alternative Dispute Resolution. Effective July 1, 2050. (SB651 HD1)

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

