
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.** This part shall apply to
6 nonjudicial foreclosures conducted under part II by power of
7 sale, of residential real property that is occupied by one or
8 more mortgagors as a primary residence; provided that this part
9 shall not apply to actions by an association to foreclose on a
10 lien for amounts owed to the association that arise under a
11 declaration filed pursuant to chapter 514A or 514B, or to a
12 mortgagor who has previously participated in dispute resolution
13 under this part for the same property on the same mortgage loan.

14 **§667-B Definitions.** As used in this part:

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



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Director" means the director of commerce and consumer
4 affairs.

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

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

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

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

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

19 **§667-C Mortgage foreclosure dispute resolution program;**
20 **administration.** (a) There is established in the department a
21 mortgage foreclosure dispute resolution program to provide an



1 owner-occupant an opportunity to negotiate an agreement that
2 avoids foreclosure or mitigates damages in cases where
3 foreclosure is unavoidable.

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

- 7 (1) Contract procurement;
- 8 (2) Performance oversight, such as monitoring compliance
9 with the program requirements; and
- 10 (3) Management services to oversee any contract between
11 the department and a private organization retained by
12 the department to provide dispute resolution services
13 or personnel, including providing the department with
14 monthly status reports and evaluations.

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

19 (c) The department is authorized to contract with county,
20 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.

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

11 **§667-E Notice of dispute resolution availability required.**

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

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

20 (1) The name and contact information of the mortgagor or
21 mortgagors and the mortgagee;



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



- 1 (7) A general description of the information that an
2 owner-occupant electing dispute resolution is required
3 to provide for participation in the program as
4 described under section 667-J(c)(2);
- 5 (8) Contact information for an accredited consumer credit
6 counseling agency in the State; and
- 7 (9) A statement that the mortgagor shall elect dispute
8 resolution pursuant to this part no later than thirty
9 days after the department's mailing of the notice or
10 the right shall be waived.

11 **§667-F Mortgagee's filing of notice with department;**
12 **filing fee.** Within ten days of serving a notice of default and
13 intention to foreclose pursuant to section 667-22, the mortgagee
14 shall file the same with the department and pay a filing fee of
15 \$75, which shall be deposited into the mortgage foreclosure
16 dispute resolution fund established under section 667-Q.

17 **§667-G Notification to mortgagor or mortgagors by**
18 **department.** Within fourteen days after the mortgagee's filing
19 of a notice of default and intention to foreclose with the
20 department, the department shall provide written notification to
21 the mortgagor or mortgagors that a notice of default and



1 intention to foreclose has been filed with the department.
2 The notification shall inform the mortgagor or mortgagors of an
3 owner-occupant's option to refer the foreclosure matter to
4 dispute resolution, and include:

- 5 (1) Information about the mortgage foreclosure dispute
6 resolution program;
- 7 (2) A form for an owner-occupant to elect or to waive
8 dispute resolution pursuant to this part that shall
9 contain instructions for the completion and return of
10 the form to the department and the department's
11 mailing address;
- 12 (3) A statement that the mortgagor electing dispute
13 resolution shall provide a certification under penalty
14 of perjury to the department that the mortgagor
15 electing dispute resolution is an owner-occupant of
16 the subject property, including a description of
17 acceptable supporting documentation as provided by
18 section 667-H(a)(2);
- 19 (4) A statement that the mortgagor shall elect dispute
20 resolution pursuant to this part no later than thirty



1 days after the department's mailing of the notice or
2 the right shall be waived;

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

7 (6) A statement that the owner-occupant shall consult with
8 a housing counselor approved by the United States
9 Department of Housing and Urban Development at least
10 thirty days prior to the first day of a scheduled
11 dispute resolution session;

12 (7) Contact information for all the local housing
13 counseling agencies approved by the United States
14 Department of Housing and Urban Development;

15 (8) Contact information for an accredited consumer credit
16 counseling agency in the State; and

17 (9) Contact information for the department.

18 The notification shall be sent to the subject property address
19 and any other addresses for any mortgagors, borrowers, and
20 guarantors as provided in the mortgagee's notice dispute



1 resolution under 667-E and the notice of default and intention
2 to foreclose under section 667-22(a).

3 **§667-H Owner-occupant's election of dispute resolution;**
4 **owner-occupant program fee; right to dispute resolution waived.**

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

8 (1) The completed program election form provided under
9 section 667-G(2);

10 (2) Certification under penalty of perjury that the
11 mortgagor is an owner-occupant according to the rules
12 adopted by the department, accompanied with any
13 supporting documentation, including copies of recent
14 utility billing statements, voter registration
15 records, real estate property tax records, or state
16 identification forms; and

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

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



1 (b) If the completed form and fee are not received within
2 the required time period, the mortgagor or mortgagors shall be
3 deemed to have waived any owner-occupant right to participate in
4 the mortgage foreclosure dispute resolution program with respect
5 to the subject property and the notice of default and intention
6 to foreclose filed with the department. The department shall
7 notify the mortgagee that the mortgagor has not elected to
8 participate in dispute resolution within ten days. After
9 receiving the department's notification, the mortgagee may
10 proceed with the nonjudicial foreclosure process along the
11 timeline provided under part II of this chapter.

12 **§667-I Notification of opening a dispute resolution case;**
13 **mortgagee's program fee.** (a) If an owner-occupant elects to
14 participate in dispute resolution, the department shall open a
15 dispute resolution case. Within fourteen days of receipt of the
16 owner-occupant's election form and fee in accordance with
17 section 667-H, the department shall send written notification of
18 the case opening to the parties, which shall include:

- 19 (1) Notification of the date, time, and location of the
20 dispute resolution session;
- 21 (2) An explanation of the dispute resolution process;



1 (3) Information about the dispute resolution program rules
2 and requirements; and

3 (4) Consequences and penalties for noncompliance.

4 The dispute resolution session shall be scheduled for a date no
5 less than thirty and no more than sixty days from the date of
6 the notification of case opening, unless mutually agreed to by
7 the parties and the neutral and according to rules adopted by
8 the department.

9 (b) Within fourteen days of the date of the mailing of the
10 written notification, the mortgagee shall pay a program fee of
11 \$300 to the department.

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

16 **§667-J Parties; requirements; process.** (a) The parties
17 to a dispute resolution process conducted under this part shall
18 consist of the owner-occupant or the owner-occupant's
19 representative, and the mortgagee or the mortgagee's
20 representative; provided that:



- 1 (1) A representative of the mortgagee who participates in
2 the dispute resolution shall be authorized to
3 negotiate a loan modification on behalf of the
4 mortgagee or shall have, at all stages of the dispute
5 resolution process, direct access by telephone or
6 other immediately available communications medium to a
7 person who is so authorized during that person's
8 normal business hours;
- 9 (2) The mortgagee and owner-occupant may be represented by
10 counsel; and
- 11 (3) The mortgagor may be assisted by a housing counselor
12 who is certified by the United States Department of
13 Housing and Urban Development.
- 14 (b) Thirty days prior to participating in a scheduled
15 dispute resolution session pursuant to this part, the owner-
16 occupant shall have consulted with a certified housing counselor
17 with a local housing counseling agency approved by the United
18 States Department of Housing and Urban Development.
- 19 (c) The parties shall comply with all information requests
20 from the department or neutral. No less than fourteen days
21 prior to the date of the dispute resolution session:



- 1 (1) The mortgagee shall provide to the department and the
2 mortgagor:
- 3 (A) A copy of the promissory note, signed by both the
4 mortgagor or mortgagors and the mortgagee,
5 including any endorsements, allonges, amendments,
6 or riders to the note evidencing the mortgage
7 debt;
- 8 (B) A copy of the mortgage document and any
9 amendments, riders, or other documentation
10 evidencing the mortgagee's right of nonjudicial
11 foreclosure and interest in the property
12 including any interest as a successor or
13 assignee; and
- 14 (C) Financial records and correspondence that confirm
15 the mortgage loan is in default.
- 16 (2) The owner-occupant shall provide to the department and
17 the mortgagee:
- 18 (A) Documentation showing income qualification for a
19 loan modification, including any copies of pay
20 stubs, W-2 forms, social security or disability
21 income, retirement income, child support income,



- 1 or any other income that the mortgagor deems
2 relevant to the mortgagor's financial ability to
3 repay the mortgage;
- 4 (B) Any records or correspondence available which may
5 dispute that the mortgage loan is in default;
- 6 (C) Any records or correspondence available
7 evidencing a loan modification or amendment;
- 8 (D) Any records or correspondence available that
9 indicate the parties are currently engaged in
10 bona fide negotiations to modify the loan or
11 negotiate a settlement of the delinquency;
- 12 (E) Names and contact information for housing
13 counselors or representatives of the mortgagee,
14 with whom the mortgagor may have or is currently
15 working with to address the delinquency; and
- 16 (F) Verification of counseling by a counselor who
17 works at a housing agency that is certified by
18 the United States Department of Housing and Urban
19 Development.
- 20 (d) The dispute resolution session shall consist of at
21 least one meeting lasting no more than three hours, which may be



1 extended only at the neutral's discretion. The parties shall be
2 present in person at the session; provided that a party, by
3 written request to the department given at least fourteen days
4 prior to the session date, may request to appear by telephone,
5 videoconference, or other contemporaneous communication medium.
6 At the session, the parties shall present the dispute and, with
7 the aid of the neutral, attempt to reach a mutually acceptable
8 agreement.

9 (e) A dispute resolution conducted pursuant to this part
10 shall use the calculations, assumptions, and forms established
11 by the Federal Deposit Insurance Corporation Loan Modification
12 Program Guide as set out on the Federal Deposit Insurance
13 Corporation's public accessible website as one means to assist
14 the parties in reaching an agreement.

15 (f) The dispute resolution process shall conclude within
16 sixty days from the first scheduled meeting between the parties
17 to the dispute resolution and the neutral; provided that the
18 neutral shall have the authority to extend this period pursuant
19 to the rules of the department adopted under this part. Nothing
20 in this part shall be construed to require the dispute



1 resolution process to take the full sixty days allotted to reach
2 a negotiated agreement.

3 **§667-K Outcome of dispute resolution; neutral's closing**
4 **report.** (a) Within fourteen days from the conclusion of the
5 dispute resolution session under section 667-J(f), the neutral
6 shall file a closing report with the department, which verifies
7 the parties' presence at the session, compliance with the
8 requirements of this part, and reports whether the parties
9 reached an agreement to resolve the dispute and the date of the
10 dispute resolution's conclusion. Upon receipt of the neutral's
11 closing report, the department shall close the case.

12 (b) If, despite the parties' participation in the dispute
13 resolution process and compliance with the requirements of this
14 part and the rules of the department adopted pursuant to this
15 part, the parties are not able to come to an agreement, the
16 neutral shall file a closing report with the department that the
17 parties met the program requirements. The mortgagee may file or
18 record the report at the bureau of conveyances or the land
19 court, as appropriate. Upon recording of the report pursuant to
20 this subsection, the foreclosure process shall resume along the
21 timeline as it existed on the date before the mortgagor elected



1 dispute resolution, and may proceed as otherwise provided by
2 law. The mortgagee shall notify the mortgagor of the recording
3 date and document number of this report and the deadline date to
4 cure default in an amended notice of default and intention to
5 foreclose. Nothing in this subsection shall be construed to
6 require the neutral to wait the full sixty days allotted for
7 dispute resolution to determine that the parties were unable to
8 reach an agreement and file a report.

9 (c) If the parties have complied with the requirements of
10 this part and the rules of the department court adopted pursuant
11 to this part and have reached an agreement, the agreement shall
12 be memorialized in a settlement document signed by the parties
13 or their authorized representatives in the presence of the
14 neutral. The parties shall be responsible for drafting any
15 agreement reached, and for filing or recording with the land
16 court or the bureau of conveyances, as appropriate, and
17 enforcing the settlement document. The neutral shall file the
18 settlement document with the neutral's closing report. The
19 settlement document shall be a contract between the parties and
20 shall be enforceable in a private contract action in a court of
21 appropriate jurisdiction in the event of breach by either party.



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

8 (d) If the parties to a dispute resolution come to an
9 agreement to resolve the matters at issue in the dispute
10 resolution before the first dispute resolution meeting scheduled
11 pursuant to this section, the parties shall notify the neutral
12 by that date. The neutral shall thereafter issue a closing
13 report that the parties have reached an agreement outside of
14 dispute resolution. If the agreement provides for foreclosure,
15 the parties shall memorialize the agreement in a writing signed
16 by both parties and provided to the neutral. Any agreement
17 authorizing foreclosure shall be attached to the neutral's
18 closing report. The parties may file or record the report at
19 the bureau of conveyances or the land court, as appropriate. If
20 the agreement authorizes foreclosure, the stay of the
21 foreclosure under section 667-M shall be released upon filing or



1 recording with the land court or bureau of conveyances, as
2 appropriate. Thereafter, the land court or bureau of
3 conveyances may record a notice of sale or other conveyance
4 document upon presentation by the mortgagee, as appropriate. No
5 fees shall be refunded if the parties come to an agreement prior
6 to or outside of a dispute resolution conducted pursuant to this
7 part.

8 **§667-L Noncompliance with requirements; statement.** (a)

9 The neutral's closing report shall indicate whether the
10 mortgagee or the owner-occupant failed to comply with
11 requirements of the program.

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

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

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) Falsifying or otherwise committing fraud during
8 the dispute resolution with respect to income
9 qualifications or owner-occupant eligibility;

10 (A) Failure to provide the required information or
11 documents; or

12 (B) Refusal to cooperate or participate in dispute
13 resolution.

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

18 (1) Sanctions against a mortgagee for unjustified
19 noncompliance with the program may include a stay of
20 the foreclosure under section 667-M and a fine payable
21 to the owner-occupant not to exceed \$3,000; or



1 (2) Sanctions against an owner-occupant for unjustified
2 noncompliance with the program may include a removal
3 of the stay of the foreclosure under section 667-M(b)
4 and a fine payable to the mortgagee not to exceed
5 \$3,000.

6 **§667-M Stay of nonjudicial foreclosure proceedings.** (a)

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

11 (b) Upon a stay under subsection (a), a mortgagee shall
12 not foreclose upon a mortgage:

13 (1) Until after the filing of a neutral's report that
14 confirms either that the parties have been unable to
15 reach an agreement under section 667-K(b) or the
16 parties have reached an agreement that authorizes
17 foreclosure under sections 667-K (c) or (d);

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

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



1 **§667-N Confidentiality.** Personal financial information
2 and other sensitive personal information, including information
3 describing an individual's finances, income, asset, liabilities,
4 net worth, bank balances, financial history or activities, or
5 credit worthiness which is disclosed in the course of the
6 program, shall be confidential and not subject to public
7 disclosure under chapter 92F or any other state law.

8 **§667-O Neutral qualifications; status and liability.** The
9 department shall determine the qualifications and training of
10 neutrals for foreclosure dispute resolution pursuant to this
11 part; provided that neutrals shall possess sufficient knowledge
12 in the areas of law, real estate, or finance and shall receive
13 sufficient training to be able to effectuate the purposes of
14 this part. The neutral shall not be liable for any act or
15 omission that occurs in relation to the administration or
16 operation of the program. The neutral shall not be a necessary
17 party to any arbitral, judicial, or administrative proceeding
18 which arises from or relates to the program. The neutral shall
19 not be called as a witness in any such proceeding nor shall the
20 neutral be subject to any subpoena duces tecum for the
21 production of documents.



1 **§667-P Rules.** In addition to the rules to be established
2 pursuant to sections 667-H(a)(2), 667-I(a), 667-J(f), 667-K(b)
3 and (c), the department may adopt rules for the administration
4 of this part, including rules to:

- 5 (1) Ensure that dispute resolution occurs in an orderly
6 and timely manner;
- 7 (2) Require each party to provide any information that the
8 neutral deems necessary;
- 9 (3) Create, establish, or recommend any forms and
10 informational materials to assist in the timely and
11 accurate filing of the neutral reports with the bureau
12 of conveyances or the land court, as appropriate;
- 13 (4) Protect the dispute resolution process from abuse and
14 ensure that each party complies with this part and the
15 rules adopted by the department pursuant to this part;
- 16 (5) Establish qualifications and training requirements for
17 neutrals;
- 18 (6) Protect from disclosure personal financial information
19 and other sensitive personal information obtained in
20 the course of foreclosure dispute resolution from
21 disclosure;



- 1 (7) Establish a procedure for data collection and
2 evaluation of the program, the state's mortgage
3 market, and the foreclosure process in general;
- 4 (9) Establish a procedure for determining the interests of
5 junior lienholders and whether they should be included
6 as parties to the dispute resolution;
- 7 (10) Establish requirements for an owner-occupant's
8 required consultation with a housing counselor; and
- 9 (11) Establish the effect of an owner-occupant's bankruptcy
10 filing on the dispute resolution process.

11 **§667-Q Mortgage foreclosure dispute resolution special**
12 **fund.** (a) There is established in the state treasury a special
13 fund to be known as the mortgage foreclosure dispute resolution
14 special fund to be administered by the department to implement
15 and operate the mortgage foreclosure dispute resolution program
16 established by this part. Moneys collected as fees or fines
17 under sections 667-F, 667-H, 667-I, 667-R, and 454M-10 for the
18 mortgage dispute resolution program and contributions from the
19 sources identified under subsection (b) shall be deposited in
20 the fund. Interest earned from the balance of the fund shall
21 become a part of the fund.



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

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

10 "§454M- Unlicensed foreclosure actions voided. Any
11 action taken in connection with a mortgage foreclosure under
12 chapter 667 by a nonexempt person who engages in the business of
13 mortgage servicing without a license as provided in this chapter
14 shall be void for purposes of chapter 667."

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

18 "§667-R Conversion; residential property; conditions. (a)
19 An owner-occupant of a residential property that is being
20 foreclosed nonjudicially under this part may convert the action
21 to a judicial foreclosure under the following conditions:



- 1 (1) A complaint conforming to section 667-S shall be filed
2 with the circuit court in the circuit where the
3 residential property is located, stating that the
4 owner-occupant of the property elects to convert the
5 nonjudicial foreclosure to a judicial foreclosure
6 proceeding;
- 7 (2) The complaint described in paragraph (1) shall be
8 filed with the circuit court no later than thirty days
9 after the notice of default and intention to foreclose
10 is served on the owner-occupant as required by section
11 667-22;
- 12 (3) Within forty-five days of the filing of the complaint,
13 all owner-occupants of an interest in the residential
14 property whose interests are pledged or otherwise
15 encumbered by the mortgage that is being foreclosed
16 and all persons who have signed the promissory note or
17 other instrument evidencing the debt secured by the
18 mortgage that is being foreclosed, including without
19 limitation co-obligors and guarantors, shall file a
20 statement in the circuit court action that they agree
21 to submit themselves to the judicial process and the



1 jurisdiction of the circuit court. If this condition
2 is not satisfied, the circuit court action may be
3 dismissed with prejudice as to the right of any owner-
4 occupant to convert the action to a judicial
5 proceeding, and the mortgagee may proceed
6 nonjudicially;

7 (4) The filing of the complaint shall automatically stay
8 the nonjudicial foreclosure action unless and until
9 the judicial proceeding has been dismissed;

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

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

19 (7) Notwithstanding chapter 607, the fee for filing the
20 complaint shall be not more than \$525; of which \$250
21 shall be deposited into the mortgage foreclosure



1 dispute resolution fund established under section 667-

2 Q.

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

6 (c) The judiciary may create and adopt a form for the
7 conversion complaint.

8 **§667-S Complaint; residential property; required contents.**

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

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

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

18 (3) The address or tax map key number and the certificate
19 of title or transfer certificate of title number if
20 within the land court's jurisdiction, of the property
21 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-T 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



1 COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-
2 OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED
3 FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE
4 THE PROPERTY IS LOCATED WITHIN THIRTY DAYS AFTER
5 SERVICE OF THIS NOTICE.

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



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

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

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

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



1 "§667-U Bar against deficiency judgments; owner-occupant
2 of residential property. The mortgagee or other person who
3 completes, pursuant to this part, the nonjudicial foreclosure of
4 a mortgage or other lien on residential property shall not be
5 entitled to pursue or obtain a deficiency judgment against an
6 owner-occupant of the residential property who, at the time the
7 notice of default and intention to foreclose is served, does
8 not have a fee simple or leasehold ownership interest in any other
9 real property unless the debt is secured by other collateral;
10 provided, however, that nothing in this section shall prohibit any
11 other mortgagee or person who holds a lien on the residential
12 property subject to the nonjudicial foreclosure, whose lien is
13 subordinate to the mortgage being foreclosed and is extinguished
14 by the nonjudicial foreclosure sale, from pursuing a monetary
15 judgment against that owner-occupant.

16 §667-V 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



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

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

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



- 1 (2) Specifying a fictitious place in the public notice of
2 the public sale;
- 3 (3) Conducting a postponed public sale on a date other
4 than the date described in the new public notice of
5 the public sale;
- 6 (4) Delaying the conveyance of the conveyance document
7 deed to a bona fide purchaser who purchases in good
8 faith for more than forty-five days after the
9 completion of the public sale;
- 10 (5) Completing nonjudicial foreclosure proceedings during
11 "short sale" escrows for bid prices that are less than
12 a purchaser's offer to purchase;
- 13 (6) Completing nonjudicial foreclosure proceedings during
14 bona fide loan modification negotiations with the
15 mortgagor; or
- 16 (7) Completing nonjudicial foreclosure proceedings against
17 a mortgagor who has been accepted or is being
18 evaluated for consideration into a federal loan
19 modification program before obtaining a certificate or
20 other documentation confirming that the mortgagor is



1 no longer eligible or an active participant of that
2 federal program.

3 §667-X Unfair or deceptive act or practice. Any
4 foreclosing mortgagee who violates this part shall be guilty of
5 an unfair or deceptive act or practice under section 480-2."

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

9 "§667-Y Invalid notice. (a) Any notices made pursuant to
10 this chapter may be issued only by persons authorized by a
11 foreclosing mortgagee or lender pursuant to an affiliate
12 statement signed by that foreclosing mortgagee or lender and
13 recorded at the bureau of conveyances identifying the agency or
14 affiliate relationship and the authority granted or conferred to
15 that agent or representative.

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

20 (c) Any notice provided by a mortgage servicer, including
21 an agent, employee, or representative of that mortgage servicer,



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

10 **§667-Z Actions and communications with the mortgagor in**
11 **connection with a foreclosure. Once a foreclosure has been**
12 **initiated under either part I or part II, a foreclosing**
13 **mortgagee shall be estopped from denying liability for any**
14 **action or communication respecting the subject property that is**
15 **received by the mortgagor from a mortgage servicer, a lender,**
16 **the foreclosing mortgagee, or the foreclosing mortgagee's**
17 **affiliate as named in the affiliate statement filed with the**
18 **bureau of conveyances pursuant to section 667-Y. This section**
19 **shall also apply to any actions and communications made by the**
20 **agents, employees, or representatives of the lender, foreclosing**



1 mortgagee, mortgage servicer, or foreclosing mortgagee's
2 affiliate.

3 **§667-AA Suspension of foreclosure actions by junior**
4 **lienholders.** Upon initiation of a foreclosure action in part I
5 or part II by a foreclosing mortgagee as defined in section 667-
6 21(b), no junior lienholder shall be permitted to initiate or
7 continue with a foreclosure until the foreclosure initiated by
8 the foreclosing mortgagee has been concluded by either a
9 judgment issued by a court pursuant to section 667-1, the
10 recording of an affidavit after public sale pursuant to section
11 667-33, or the filing of a settlement document under the
12 mortgage foreclosure dispute resolution provisions of section
13 667-K; provided that a junior lienholder shall be permitted to
14 initiate or continue with a foreclosure if the resolution
15 document allows for foreclosure."

16 SECTION 6. Section 26-9, Hawaii Revised Statutes, is
17 amended by amending subsection (o) to read as follows:

18 "(o) Every person licensed under any chapter within the
19 jurisdiction of the department of commerce and consumer affairs
20 and every person licensed subject to chapter 485A or registered
21 under chapter 467B shall pay upon issuance of a license, permit,



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



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

5 There is created in the state treasury a special fund to be
6 known as the compliance resolution fund to be expended by the
7 director's designated representatives as provided by this
8 subsection. Notwithstanding any law to the contrary, all
9 revenues, fees, and fines collected by the department shall be
10 deposited into the compliance resolution fund. Unencumbered
11 balances existing on June 30, 1999, in the cable television fund
12 under chapter 440G, the division of consumer advocacy fund under
13 chapter 269, the financial institution examiners' revolving
14 fund, section 412:2-109, the special handling fund, section 414-
15 13, and unencumbered balances existing on June 30, 2002, in the
16 insurance regulation fund, section 431:2-215, shall be deposited
17 into the compliance resolution fund. This provision shall not
18 apply to the drivers education fund underwriters fee, sections
19 431:10C-115 and 431:10G-107, insurance premium taxes and
20 revenues, revenues of the workers' compensation special
21 compensation fund, section 386-151, the captive insurance



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



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 9. 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 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 application and
14 yearly renewal a complete, current schedule of the
15 ranges of costs and fees it charges borrowers for its
16 servicing-related activities; [~~and~~]
- 17 (4) File with [~~the commissioner upon request~~] its yearly
18 renewal statement a report in a form and format
19 acceptable to the director detailing the servicer's
20 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 in
4 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 is providing service, any
16 subsidiary or parent entities, and a description
17 of the authority held by the mortgage servicer
18 through its affiliations; and
- 19 [~~F~~] (G) Any other information that the commissioner may
20 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 has actively serviced at least
6 mortgage loans in the State within the
7 previous calendar year; provided that nothing in this
8 section shall prohibit a mortgagee as defined by
9 section 667-21 or a mortgage servicer from contracting
10 with a licensee that maintains an office in this State
11 in conformity with this section for the purposes of
12 addressing consumer inquiries or complaints and
13 accepting service of process."

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

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



1 SECTION 11. Section 514A-90, Hawaii Revised Statutes, is
2 amended by amending subsection (h) to read as follows:

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

10 SECTION 12. Section 514B-146, Hawaii Revised Statutes, is
11 amended by amending subsection (h) to read as follows:

12 "(h) The amount of the special assessment assessed under
13 subsection (g) shall not exceed the total amount of unpaid
14 regular monthly common assessments that were assessed during the
15 [~~six~~] twelve months immediately preceding the completion of the
16 judicial or nonjudicial power of sale foreclosure. In no event
17 shall the amount of the special assessment exceed the sum of
18 [~~\$3,600-~~] \$10,000."

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



1 "PART I. FORECLOSURE BY ACTION [~~OR~~
2 ~~FORECLOSURE BY POWER OF SALE]~~"

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

5 "**§667-5.5 Foreclosure notice.** Notwithstanding any law or
6 agreement to the contrary, any person who forecloses on a
7 property under this part within a planned community, a
8 condominium apartment or unit, or an apartment in a cooperative
9 housing project shall notify, by way of registered or certified
10 mail, the board of directors of the planned community
11 association, the association of owners of the condominium
12 project, or the cooperative housing project in which the
13 property to be foreclosed is located, of the foreclosure at the
14 time foreclosure proceedings are begun. The notice, at a
15 minimum, shall identify the property, condominium apartment or
16 unit, or cooperative apartment [~~which~~] that is the subject of
17 the foreclosure and identify the name or names of the person or
18 persons bringing foreclosure proceedings. This section shall
19 not apply when the planned community association, condominium
20 association of owners, or cooperative housing corporation is a
21 party in a foreclosure action. This section shall not affect



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

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

6 "**§667-10 Power unaffected by transfer; surplus after sale.**

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

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

18 "[~~+~~]PART II.[~~-~~] ~~ALTERNATE~~ POWER OF SALE FORECLOSURE PROCESS"

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



1 "~~§667-21~~ ~~Alternate power~~ Power of sale foreclosure
2 **process; definitions.** (a) The process in this part is [~~an~~
3 ~~alternative power of sale process to the foreclosure by action~~
4 ~~and the foreclosure by power of sale in part I.~~] a power of sale
5 foreclosure process.

6 (b) As used in this part:

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

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

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



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

4 (1) The foreclosing mortgagee;

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

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

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

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

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



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

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

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

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

12 "Nonjudicial foreclosure" means foreclosure under the power
13 of sale foreclosure process under part II.

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

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

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



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

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

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

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

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



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

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

7 "~~§667-22~~ **Notice of default[~~;~~] and intention to foreclose;**
8 **contents; distribution.** (a) When the mortgagor or the borrower
9 has breached the mortgage agreement, and when the foreclosing
10 mortgagee intends to conduct a power of sale foreclosure under
11 this part, the foreclosing mortgagee shall prepare a written
12 notice of default and intention to foreclose addressed to the
13 mortgagor, the borrower, and any guarantor. The notice of
14 default and intention to foreclose shall state:

- 15 (1) The name and address of the current mortgagee;
16 (2) The name and last known address of [~~the~~] all
17 [~~mortgagor,~~] mortgagors, [~~the borrower,~~] borrowers,
18 and any [~~guarantor,~~] guarantors;
19 (3) The address or a description of the location of the
20 mortgaged property, [~~and~~] the tax map key number, and
21 the certificate of title or transfer certificate of



- 1 title number if within the jurisdiction of the land
2 court, of the mortgaged property;
- 3 (4) The description of the default, and if the default is
4 a monetary default, an itemization of the delinquent
5 amount shall be given;
- 6 (5) The action that must be taken to cure the default,
7 including the amount to cure the default, together
8 with the estimated amount of the foreclosing
9 mortgagee's attorney's fees and costs, and all other
10 fees and costs estimated to be incurred by the
11 foreclosing mortgagee related to the default by the
12 deadline date;
- 13 (6) The date by which the default must be cured, which
14 deadline date shall be at least [~~sixty~~] ninety days
15 after the date of the notice of default[+] and
16 intention to foreclose;
- 17 (7) [~~That~~] A statement that if the default is not cured by
18 the deadline date stated in the notice of default[+] and
19 intention to foreclose, the entire unpaid balance
20 of the moneys owed to the mortgagee under the mortgage
21 agreement will be due, that the mortgagee intends to



1 conduct a power of sale foreclosure to sell the
2 mortgaged property at a public sale without any court
3 action and without going to court, and that the
4 mortgagee or any other person may acquire the
5 mortgaged property at the public sale; ~~and~~

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

11 (9) Notice of the right of the owner-occupant to elect to
12 participate in a dispute resolution process as
13 required by part _____.

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

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



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

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

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

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



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

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

14 (c) The notice of default and intention to foreclose shall
15 include:

- 16 (1) A copy of the original mortgage agreement, and copies
17 of any subsequent mortgage agreements and assignments;
18 (2) A copy of the promissory note, signed by both the
19 mortgagor and the mortgagee, including any
20 endorsements and allonges on the note; and



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

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

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

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

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

20 (3) The state director of taxation;



1 (4) The director of finance of the county where the
 2 mortgaged property is located; and
 3 (5) The department of commerce and consumer affairs, where
 4 required to do so under section 667-F.

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

7 (f) As used in this part, unless the context clearly
 8 indicates otherwise, the notice of default and intention to
 9 foreclose shall also include any amended notice that results
 10 from a failure of dispute resolution under part ."

11 SECTION 19. Section 667-23, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "~~[(f)]~~ **§667-23** **Recordation of notice of default** ~~[and~~
 14 **intention to foreclose.** Before the deadline date in the notice
 15 of default ~~[and~~ intention to foreclose, the notice ~~[of~~
 16 ~~default]~~ shall be recorded in a recordable form ~~[shall be~~
 17 ~~recorded]~~ in a manner similar to recordation of notices of
 18 pendency of action under section 501-151 or section 634-51, or
 19 both, as applicable. The recorded notice of default and
 20 intention to foreclose shall have the same effect as a notice of
 21 pendency of action. From and after the recordation of the



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

5 SECTION 20. Section 667-24, Hawaii Revised Statutes, is
6 amended to read as follows:

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

18 (b) If the default is not cured, as required by the notice
19 of default[-] and intention to foreclose or if the parties have
20 not reached a settlement agreement pursuant to part and no
21 report of noncompliance has been issued against the mortgagee



1 under section 667-L, the foreclosing mortgagee, without filing a
2 court action and without going to court, may foreclose the
3 mortgage under power of sale to sell the mortgaged property at a
4 public sale."

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

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

- 14 (1) At the state capitol, for a public sale of mortgaged
15 property located in the city and county of Honolulu;
16 (2) At a state facility in Hilo, for a public sale of
17 mortgaged property located in the eastern portion of
18 the county of Hawaii;
19 (3) At a state facility in Kona, for a public sale of
20 mortgaged property located in the western portion of
21 the county of Hawaii;



1 (4) At a state facility in the county seat of Maui, for a
2 public sale of mortgaged property located in the
3 county of Maui; and

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

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

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

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



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

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

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

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

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

10 (3) The unpaid balance of the moneys owed to the mortgagee
11 under the mortgage agreement;

12 (4) A description of the mortgaged property, including the
13 address ~~[or description of the location of the~~
14 ~~mortgaged property,~~] and the tax map key number of the
15 mortgaged property;

16 (5) The name of the mortgagor and the borrower;

17 (6) The name of the foreclosing mortgagee;

18 (7) The name of any prior or junior creditors having 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 (8) The name, the address in the State, and the telephone
2 number in the State of the person in the State
3 conducting the public sale; [~~and~~]

4 (9) The terms and conditions of the public sale[~~-~~]; and

5 (10) An estimate of the opening bid."

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

7 "(c) If the default is not cured as required by the notice
8 of default[~~-~~] and intention to foreclose, the foreclosing
9 mortgagee shall have a copy of the public notice of the public
10 sale of the mortgaged property:

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

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

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

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



1 (5) Posted on the mortgaged property or on such other real
2 property of which the mortgaged property is a part;
3 and
4 (6) Mailed or delivered to any other person entitled to
5 receive notice under section [~~667-5-5.~~] 667-V.
6 (d) The foreclosing mortgagee shall have the public notice
7 of the public sale printed in not less than seven-point font and
8 published in the classified section of a daily newspaper [øf]
9 having the largest general circulation expressly in the county
10 where the mortgaged property is located[-]; provided that for
11 property located in a county with a population of more than one
12 hundred thousand but less than two hundred thousand, the public
13 notice shall be published in the newspaper having the largest
14 general circulation expressly in the western or eastern half of
15 the county, as the case may be, in which the property is
16 located. The public notice shall be published once each week
17 for three consecutive weeks (three publications). The public
18 sale shall take place no sooner than fourteen days after the
19 date of the publication of the third public notice
20 advertisement."



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

3 "(a) The public sale may be either postponed or canceled
4 by the foreclosing mortgagee. Notice of the postponement or the
5 cancellation of the public sale shall be[+]

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

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

12 (b) If there is a postponement of the public sale of the
13 mortgaged property, a new public notice of the public sale shall
14 be published once in the format described in section 667-27.
15 The new public notice shall state that it is a notice of a
16 postponed sale. The public sale shall take place no sooner than
17 fourteen days after the date of the publication of the new
18 public notice. ~~[No sooner]~~ Not less than fourteen days before
19 the date of the public sale, a copy of the new public notice
20 shall be posted on the mortgaged property or on such other real
21 property of which the mortgaged property is a part, and it shall



1 be mailed or delivered to the mortgagor, to the borrower, and to
2 any other person entitled to receive notice under section [~~667-~~
3 ~~27-~~] 667-22(e). Notwithstanding the foregoing, upon the fourth
4 postponement of every series of four consecutive postponements,
5 the foreclosing mortgagee shall follow all of the public notice
6 of public sale requirements of section 667-27, including the
7 requirements of mailing and posting under section 667-27(c) and
8 of publication under section 667-27(d)."

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

11 "[~~§~~667-29] **Authorized bidder; successful bidder.** Any
12 person, including the foreclosing mortgagee, shall be authorized
13 to bid for the mortgaged property at the public sale and to
14 purchase the mortgaged property. The highest bidder who meets
15 the requirements of the terms and conditions of the public sale
16 shall be the successful bidder. The public sale shall be
17 considered as being held when the mortgaged property is declared
18 by the foreclosing mortgagee as being sold to the successful
19 bidder. When the public sale is held, the successful bidder at
20 the public sale, as the purchaser, shall make a nonrefundable
21 downpayment to the foreclosing mortgagee of not less than ten



1 per cent of the highest successful bid price. If the successful
2 bidder is the foreclosing mortgagee or any other mortgagee
3 having a recorded lien on the mortgaged property before the
4 recordation of the notice of default and intention to foreclose
5 under section 667-23, the downpayment requirement may be
6 satisfied by offset and a credit bid up to the amount of the
7 mortgage debt."

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

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

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



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

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

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

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

9 (3) Summarizing what was done by the foreclosing
10 mortgagee;

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

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

15 (6) Referencing the document number of the affiliate
16 statement filed at the bureau of conveyances as
17 required under section 667-Y; and

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



1 servicer affiliation statement as required under
2 section 454M-5(a)(4)(F).

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

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

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

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



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

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

11 (E) A public notice of the public sale was initially
12 published in the classified section of the
13 _____, a daily newspaper of
14 general circulation in the county where the
15 mortgaged property is located, once each week for
16 three consecutive weeks on the following dates:
17 _____. A copy of the affidavit of
18 publication for the last public notice of the
19 public sale is attached as Exhibit "2". The date
20 of the public sale was _____ (date). The



1 last publication was not less than fourteen days
2 before the date of the public sale;

3 (F) The public notice of the public sale was sent to
4 the mortgagor, to the borrower, to the state
5 director of taxation, to the director of finance
6 of the county where the mortgaged property is
7 located, and to the following:

8 _____ . The public notice was sent on
9 the following dates and in the following manner:

10 _____ . Those dates were after the
11 deadline date in the notice of default[7] and
12 intention to foreclose, and those dates were at
13 least sixty days before the date of the public
14 sale; .

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



1 (H) Two public showings (open houses) of the
2 mortgaged property were held (or were not held
3 because the mortgagor did not cooperate);

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

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

15 and

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

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

19 "[~~§~~§667-39[~~§~~] **Right to enforce this part.** (a) The
20 foreclosing mortgagee, any other creditor having a recorded lien
21 on the mortgaged property before the recordation of the notice



1 of default and intention to foreclose under section 667-23, the
2 borrower, and the mortgagor, may enforce this part by bringing
3 an action in the circuit court of the circuit where the
4 mortgaged property is located.

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

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

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



1 that the financial institution and other business entities and
2 persons who are authorized under this part to exercise the power
3 of sale foreclosure, in the event of the borrower's default,
4 have the option of pursuing either a judicial or nonjudicial
5 foreclosure as provided by law. These informational materials
6 shall fully and completely explain these remedies[~~-~~] in simple
7 and understandable terms."

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

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

19 (1) ~~Give notice of the mortgagee's, successor's, or~~
20 ~~person's intention to foreclose the mortgage and of~~
21 ~~the sale of the mortgaged property, by publication of~~



1 ~~the notice once in each of three successive weeks~~
2 ~~(three publications), the last publication to be not~~
3 ~~less than fourteen days before the day of sale, in a~~
4 ~~newspaper having a general circulation in the county~~
5 ~~in which the mortgaged property lies; and~~

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

8 ~~(b) Copies of the notice required under subsection (a)~~
9 ~~shall be:~~

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

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

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

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



1 ~~mortgagee related to the default prior to the auction~~
2 ~~within five business days of the request; and~~

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

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

18 ~~(e) The affidavit and copy of the notice shall be recorded~~
19 ~~and indexed by the registrar, in the manner provided in chapter~~
20 ~~501 or 502, as the case may be.~~



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

3 SECTION 31. Section 667-5.7, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§667-5.7~~ **Public sale.** At any public sale pursuant to~~
6 ~~section 667-5, the successful bidder at the public sale, as the~~
7 ~~purchaser, shall not be required to make a downpayment to the~~
8 ~~foreclosing mortgagee of more than ten per cent of the highest~~
9 ~~successful bid price."]~~

10 SECTION 32. Section 667-6, Hawaii Revised Statutes, is
11 repealed.

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



1 ~~recordation or filing of the subject mortgage at the bureau of~~
2 ~~conveyances or the land court, but must be submitted prior to~~
3 ~~the completion of the publication of the mortgagee's notice of~~
4 ~~intention to foreclose the mortgage and of the sale of the~~
5 ~~mortgaged property. This request shall be signed by the~~
6 ~~mortgage creditor, or its authorized representative, desiring to~~
7 ~~receive notice, specifying the name and address of the person to~~
8 ~~whom the notice is to be mailed. The mortgagee receiving the~~
9 ~~request shall thereafter give notice to all mortgage creditors~~
10 ~~who have timely submitted their request. The notice shall be~~
11 ~~sent by mail or otherwise communicated to the mortgage~~
12 ~~creditors, not less than seven calendar days prior to the date~~
13 ~~of sale.~~

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



1 SECTION 33. Section 667-7, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§667-7 Notice, contents, affidavit. (a) The notice of
4 intention of foreclosure shall contain:~~

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

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

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

12 SECTION 34. Section 667-8, Hawaii Revised Statutes, is
13 repealed.

14 [~~"§667-8 Affidavit as evidence, when. If it appears by
15 the affidavit that the affiant has in all respects complied with
16 the requirements of the power of sale and the statute, in
17 relation to all things to be done by the affiant before selling
18 the property, and has sold the same in the manner required by
19 the power, the affidavit, or a duly certified copy of the record
20 thereof, shall be admitted as evidence that the power of sale
21 was duly executed."]~~



1 SECTION 35. Section 667-9, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§667-9 Dower barred, when. If the mortgage was executed~~
4 ~~by a man having at the time no lawful wife, or if the mortgagor~~
5 ~~being married, his wife joined in the deed in token of her~~
6 ~~release of dower, the sale of the property in the mode aforesaid~~
7 ~~shall be effectual to bar all claim and possibility of dower in~~
8 ~~the property."]~~

9 SECTION 36. Section 667-34, Hawaii Revised Statutes, is
10 repealed.

11 [~~"[§667-34] Foreclosure sale; conclusive presumptions.~~
12 ~~Unless an appeal is taken as set forth in section 667-35, any~~
13 ~~foreclosure sale held in accordance with this part shall be~~
14 ~~conclusively presumed to have been conducted in a legal, fair,~~
15 ~~and reasonable manner. The sale price shall be conclusively~~
16 ~~presumed to be reasonable and equal to the fair market value of~~
17 ~~the property based on the circumstances and on the economic~~
18 ~~conditions at the time of the sale. The statements in the~~
19 ~~recorded affidavit shall be conclusive evidence as to the facts~~
20 ~~stated therein for any purpose, in any court and in any~~
21 ~~proceeding, and in favor of bona fide purchasers and~~



1 ~~encumbrancers for value without notice. The purchaser of the~~
2 ~~mortgaged property shall be conclusively presumed to be a bona~~
3 ~~fide purchaser. Encumbrancers for value include liens placed by~~
4 ~~lenders who provide the purchaser with purchase money in~~
5 ~~exchange for a mortgage or other security interest in the newly~~
6 ~~conveyed property."]~~

7 SECTION 37. Section 667-35, Hawaii Revised Statutes, is
8 repealed.

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



1 SECTION 38. Section 667-37, Hawaii Revised Statutes, is
2 repealed.

3 ["~~§667-37~~ ~~Judicial action of foreclosure before public~~
4 ~~sale.~~ ~~This part shall not prohibit the borrower, the~~
5 ~~foreclosing mortgagee, or any other creditor having a recorded~~
6 ~~lien on the mortgaged property before the recordation of the~~
7 ~~notice of default under section 667-23, from filing an action~~
8 ~~for the judicial foreclosure of the mortgaged property in the~~
9 ~~circuit court of the circuit where the mortgaged property is~~
10 ~~located; provided that the action is filed before the public~~
11 ~~sale is held. While that circuit court foreclosure action is~~
12 ~~pending, the power of sale foreclosure process shall be~~
13 ~~stayed.~~"]

14 SECTION 39. Section 667-38, Hawaii Revised Statutes, is
15 repealed.

16 ["~~§667-38~~ ~~Recordation; full satisfaction of debt by~~
17 ~~borrower.~~ ~~The recordation of both the conveyance document and~~
18 ~~the affidavit shall operate as full satisfaction of the debt~~
19 ~~owed by the borrower to the foreclosing mortgagee even if the~~
20 ~~foreclosing mortgagee receives nothing from the sale proceeds,~~
21 ~~unless the debt is secured by other collateral, or except as~~



1 ~~otherwise provided by law. The debts of other lien creditors~~
2 ~~are unaffected except as provided in this part."]~~

3 SECTION 40. Section 667-42, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§667-42~~ Application of this part. The requirements of~~
6 ~~this part shall apply only to new mortgages, loans, agreements,~~
7 ~~and contracts containing power of sale foreclosure language~~
8 ~~executed by the borrowers or mortgagors after July 1, 1999."]~~

9 SECTION 41. On the effective date of this Act, there shall
10 be a forty-five day phase-in period ending on August 14, 2050,
11 in which any owner-occupant, as defined under section 667-21(b),
12 Hawaii Revised Statutes, who is undergoing a nonjudicial
13 foreclosure for which the mortgagee's affidavit has not yet been
14 filed pursuant to sections 667-5 or 667-32, Hawaii Revised
15 Statutes, may elect to convert to a judicial foreclosure under
16 section 3 of this Act. An owner-occupant who elects to convert
17 a nonjudicial foreclosure to a judicial foreclosure during the
18 phase-in period:

19 (1) Shall submit with the complaint and filing fee as
20 required under sections 667-R and 667-S, Hawaii
21 Revised Statutes, copies of any notices of default



1 received from the mortgagee and published notices of
2 the public sale made pursuant to section 667-5, Hawaii
3 Revised Statutes, in lieu of the notice of default and
4 intention to foreclose as provided by section 667-22,
5 Hawaii Revised Statutes; and

6 (2) Shall not be subject to the deadline described in
7 section 667-R(a)(2), Hawaii Revised Statutes;
8 provided further that the requirements of section 667-T, Hawaii
9 Revised Statutes, shall not be applicable to the foreclosing
10 mortgagee.

11 SECTION 42. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so
13 much thereof as may be necessary for fiscal year 2011-2012 to be
14 deposited into the mortgage foreclosure dispute resolution
15 special fund established pursuant to section 667-Q, Hawaii
16 Revised Statutes, and used to help pay for the initial costs
17 associated with establishing a dispute resolution program
18 administered by the department of commerce and consumer affairs
19 for use by mortgagors and owner-occupants to avoid or mitigate
20 the damages of foreclosure. The sum appropriated shall be
21 expended by the department for the purposes of this Act;



1 provided that upon receipt of sufficient moneys to accomplish
2 its purpose, the mortgage foreclosure dispute resolution special
3 fund shall reimburse the general fund for the appropriation made
4 pursuant to this Act.

5 SECTION 43. There is appropriated out of the compliance
6 resolution special fund established under section 26-9(o),
7 Hawaii Revised Statutes, the sum of \$_____, or so much
8 thereof as may be necessary for fiscal year 2011-2012, to be
9 deposited into the mortgage foreclosure dispute resolution
10 special fund created in section 667-Q, Hawaii Revised Statutes,
11 as seed capital; provided that upon receipt of sufficient moneys
12 to accomplish its purpose, the mortgage foreclosure dispute
13 resolution special fund shall reimburse the compliance
14 resolution fund for the appropriation made pursuant to this Act.

15 SECTION 44. There is appropriated out of the mortgage
16 foreclosure dispute resolution special fund the sum of
17 \$_____, or so much thereof as may be necessary for fiscal
18 year 2011-2012 and the same sum or so much thereof as may be
19 necessary for fiscal year 2012-2013 for all expenses of the
20 mortgage foreclosure dispute resolution program, including the
21 hiring of one full-time program specialist exempt from chapter



1 76, Hawaii Revised Statutes, and one full-time office assistant
2 in the division of administrative hearings, department of
3 commerce and consumer affairs, to carry out the purposes of this
4 Act. The sums appropriated shall be expended by the department
5 of commerce and consumer affairs for the purposes of this Act.

6 SECTION 45. In codifying the new sections added by
7 sections 1, 3, 4, and 5 of this Act, the revisor of statutes
8 shall substitute appropriate section numbers for the letters
9 used in designating the new sections in this Act.

10 SECTION 46. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 47. This Act shall take effect on July 1, 2050;
13 provided that:

14 (1) Section 1 shall take effect on January 1, 2051;
15 provided further that 667-Q shall be effective upon
16 approval;

17 (2) Sections 42, 43, and 44 shall take effect on July 1,
18 2011;

19 (3) Sections 1, 11, and 12 shall be repealed on July 1,
20 2053, and sections 514A-90 and 514B-146, Hawaii
21 Revised Statutes, shall be reenacted in the form in



1 which they read on June 30, 2053; provided that upon
2 the repeal of section 1, all moneys deposited in the
3 mortgage foreclosure dispute resolution fund shall be
4 transferred to the general fund and compliance
5 resolution fund in proportion to the appropriations
6 made under sections 42 and 43; and
7 (4) Section 3 shall be repealed on December 31, 2051.



Report Title:

Mortgage Foreclosures

Description:

Establishes a temporary mortgage foreclosure dispute resolution program. Implements recommendations of the mortgage foreclosure task force relating to conversion from nonjudicial to judicial foreclosure. Strengthens laws regarding mortgage servicers. Repeals the old nonjudicial foreclosure process. Strengthens and clarifies the new nonjudicial foreclosure process. Effective July 1, 2050. (SB651 HD2)

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

