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# A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1           SECTION 1. Act 162, Session Laws of Hawaii 2010, created a  
2 mortgage foreclosure task force to undertake a study to develop  
3 both general and specific policies and procedures necessary to  
4 improve the manner in which mortgage foreclosures are conducted  
5 in the State. The Act directed the task force to submit two  
6 reports, a preliminary report for the regular session of 2011  
7 and a final report for the regular session of 2012. The  
8 legislature also finds that in the preliminary report for the  
9 regular session of 2011, the task force proposed legislation  
10 that amends the existing nonjudicial foreclosure process, which  
11 is established as the foreclosure by power of sale process under  
12 part I of chapter 667, Hawaii Revised Statutes. The legislature  
13 further finds that implementing the task force recommendations  
14 will help modernize the present law, by providing increased  
15 clarity, certainty, efficiency, and fairness to both borrowers  
16 and lenders.

17           The legislature notes that the mortgage foreclosure task  
18 force is comprised of individuals representing borrowers,



1 lenders, and other stakeholders in the mortgage foreclosure  
2 process. The legislature finds that the recommendations in the  
3 preliminary report of the mortgage foreclosure task force for  
4 the regular session of 2011 reflect a consensus that was finally  
5 reached among this diverse group of individuals over a course of  
6 several months of public meetings held during the legislative  
7 interim of 2010. The legislature further finds that  
8 implementing the task force recommendations will help modernize  
9 the present law, by providing increased clarity, certainty,  
10 efficiency, and fairness to both borrowers and lenders.

11 The legislature further finds that several other states and  
12 municipalities have enacted mandatory foreclosure dispute  
13 resolution programs to respond to their own high rates of  
14 foreclosure. Many of these programs have been successful in  
15 allowing families to stay in their homes or to reach some  
16 agreement that mitigates damages in the cases where foreclosure  
17 is inevitable. Nevada's foreclosure mediation program is widely  
18 seen as one example of such a successful program. Since the  
19 start of the Nevada program in September 2009, approximately  
20 4,200 mediations have been conducted between homeowners and  
21 foreclosing mortgagees. In forty-six per cent of these  
22 mediations, homeowners have been able to reach an agreement to



1 remain in the home and in an additional sixteen per cent of  
2 cases, homeowners have been able to reach an agreement that  
3 mitigates damage and preserves their dignity. The legislature  
4 finds that Nevada's foreclosure mediation program serves as a  
5 useful model for a similar program in Hawaii.

6 The purpose of this Act is to reform the mortgage  
7 foreclosure system by implementing the recommendations of the  
8 mortgage foreclosure task force, establishing a mortgage  
9 foreclosure dispute resolution program, and implementing  
10 additional provisions based on best practices from other  
11 jurisdictions and recommendations from professionals working  
12 within the foreclosure industry.

13 **PART I**

14 SECTION 2. Chapter 667, Hawaii Revised Statutes, is  
15 amended by adding nine new sections to part I to be  
16 appropriately designated and to read as follows:

17 "§667-A Definitions. As used in this part, unless the  
18 context requires otherwise:

19 "Association" has the same meaning as in sections 514B-3 or  
20 421J-2.

21 "Nonjudicial foreclosure" means foreclosure under power of  
22 sale.



1       "Owner-occupant" means a person who, at the time that a  
2 notice is served of the intent to foreclose on a residential  
3 property under the power of sale, owns an interest which is  
4 encumbered by the mortgage being foreclosed in the residential  
5 property; provided that the residential property is and has been  
6 the person's primary residence for a continuous period of not  
7 less than two hundred days immediately preceding the date on  
8 which the notice is served.

9       "Residential property" means real property that is improved  
10 and used for residential purposes.

11       §667-B Conversion to judicial foreclosure; residential  
12 property; conditions. (a) An owner-occupant of a residential  
13 property that is subject to nonjudicial foreclosure under this  
14 part may convert the action to a judicial foreclosure provided  
15 that:

16       (1) The owner-occupant files a complaint conforming to  
17 section 667-C with the circuit court in the circuit  
18 where the residential property is located, stating  
19 that the owner-occupant of the property elects to  
20 convert the nonjudicial foreclosure to a judicial  
21 foreclosure proceeding, no later than twenty days  
22 after the notice of the nonjudicial foreclosure action



1 is served on the owner-occupant as required by section  
2 667-5 (a) (1) (A);

3 (2) Within ninety days of the filing of a complaint  
4 pursuant to paragraph (1), all owners of an interest  
5 in the residential property whose interests are  
6 pledged or otherwise encumbered by the mortgage that  
7 is being foreclosed and all persons who have signed  
8 the promissory note or other instrument evidencing the  
9 debt secured by the mortgage that is being foreclosed,  
10 including without limitation co-obligors and  
11 guarantors, file a statement in the circuit court  
12 action agreeing to submit to the judicial process and  
13 the jurisdiction of the circuit court; provided  
14 further that if this condition is not satisfied, the  
15 circuit court action shall be dismissed with prejudice  
16 as to the right of any owner-occupant to convert the  
17 action to a judicial proceeding, and the mortgagee may  
18 proceed nonjudicially;

19 (3) Filing a complaint pursuant to paragraph (1) shall  
20 automatically stay the nonjudicial foreclosure action  
21 unless and until the judicial proceeding has been  
22 dismissed;



1       (4) The person filing a complaint pursuant to paragraph  
2           (1) shall have an affirmative duty to promptly notify  
3           the Hawaii attorney who is handling the nonjudicial  
4           foreclosure about the filing of the complaint for  
5           conversion;

6       (5) All parties joined in the converted judicial  
7           proceeding may assert therein any claims and defenses  
8           that they could have asserted had the action  
9           originally been commenced as a judicial foreclosure  
10          action; and

11       (6) Notwithstanding the authority of the supreme court to  
12           establish fees pursuant to section 607-1, the fee for  
13           filing a complaint for conversion shall be not more  
14           than \$ \_\_\_\_\_.

15       (b) This section shall not apply to nonjudicial  
16       foreclosures of association liens.

17       (c) This section shall not apply to nonjudicial  
18       foreclosure for which the mortgagor has elected to pursue  
19       alternative dispute resolution pursuant to part \_\_\_\_\_.

20       **§667-C Complaint; residential property; required contents.**

21       (a) A complaint for conversion filed pursuant to section 667-B  
22       shall contain at a minimum:



- 1       (1) A caption setting forth the name of the court, the  
2       title of the action, and the file number; provided  
3       that the title of the action shall include the names  
4       of the filing party as plaintiff and the foreclosing  
5       party as the defendant;
  
- 6       (2) The name, mailing address, and telephone number of the  
7       filing party;
  
- 8       (3) The address or tax map key number of the property  
9       subject to the foreclosure action;
  
- 10      (4) A statement identifying all other owners of an  
11      interest in the residential property whose interests  
12      are pledged or otherwise encumbered by the mortgage  
13      that is being foreclosed and all persons who have  
14      signed the promissory note or other instrument  
15      evidencing the debt secured by the mortgage that is  
16      being foreclosed, including without limitation co-  
17      obligors and guarantors and the property insurer;
  
- 18      (5) A certification under penalty of perjury that the  
19      filing party is an owner-occupant of the subject  
20      property and seeks to convert the nonjudicial  
21      foreclosure to a judicial proceeding;



1       (6) A statement certifying that the filing party served a  
2       copy of the complaint on the attorney identified in  
3       the notice of intent to foreclose either by personal  
4       delivery at, or by postage prepaid United States mail  
5       to, the address of the attorney as set forth in the  
6       notice of intent to foreclose; and

7       (7) A copy of the notice of intent to foreclose that was  
8       served on the filing party and the property insurer  
9       for the power of sale foreclosure that the filing  
10       party is seeking to convert to a judicial proceeding.

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

17       §667-D Notice of intent to foreclose; residential  
18       property; required statement on conversion. (a) The notice of  
19       intent to foreclose nonjudicially that is served and posted as  
20       required under sections 667-5(a)(1)(A) and 667-5(b)(2) shall  
21       include, in addition to the contents required under section





1 667-7, a statement printed in not less than 14-point font as  
2 follows:

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

21 IN ADDITION, ALL OWNERS OF AN INTEREST IN  
22 THE RESIDENTIAL PROPERTY WHOSE INTERESTS HAVE



1 BEEN PLEDGED OR OTHERWISE ENCUMBERED BY THE  
2 MORTGAGE THAT IS BEING FORECLOSED AND ALL PERSONS  
3 WHO HAVE SIGNED THE PROMISSORY NOTE OR OTHER  
4 INSTRUMENT EVIDENCING THE DEBT SECURED BY THE  
5 MORTGAGE THAT IS BEING FORECLOSED, INCLUDING,  
6 WITHOUT LIMITATION, CO-OBLIGORS AND GUARANTORS,  
7 SHALL FILE A STATEMENT WITHIN NINETY DAYS OF THE  
8 FILING OF THE ATTACHED FORM IN THE CIRCUIT COURT  
9 ACTION THAT THEY AGREE TO SUBMIT TO THE JUDICIAL  
10 PROCESS AND THE JURISDICTION OF THE CIRCUIT  
11 COURT. FAILURE TO SATISFY THIS CONDITION WILL  
12 RESULT IN DISMISSAL OF THE CIRCUIT COURT ACTION.

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

16 A FORECLOSING LENDER WHO COMPLETES A  
17 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY  
18 SHALL BE PROHIBITED UNDER HAWAII LAW FROM  
19 PURSUING A DEFICIENCY JUDGMENT AGAINST AN OWNER-  
20 OCCUPANT WHO DOES NOT OWN A FEE SIMPLE OR  
21 LEASEHOLD INTEREST IN ANY OTHER REAL PROPERTY.  
22 IF THIS ACTION IS CONVERTED TO A JUDICIAL



1 PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE  
2 TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT  
3 TO SEEK A DEFICIENCY JUDGMENT.

4 ALTERNATIVE DISPUTE RESOLUTION FOR THE  
5 PURPOSE OF ATTEMPTING TO AVOID FORECLOSURE OR OF  
6 MITIGATING THE EFFECTS OF FORECLOSURE ON A  
7 HOMEOWNER IS AVAILABLE IN NONJUDICIAL FORECLOSURE  
8 ACTIONS. HOWEVER, ALTERNATIVE DISPUTE RESOLUTION  
9 IS NOT AVAILABLE IN JUDICIAL FORECLOSURE ACTIONS.  
10 IF THIS ACTION IS CONVERTED TO A JUDICIAL  
11 PROCEEDING, YOU WILL NOT HAVE THE RIGHT TO PURSUE  
12 ALTERNATIVE DISPUTE RESOLUTION TO ATTEMPT TO  
13 AVOID FORECLOSURE OR TO MITIGATE THE DAMAGES OF  
14 FORECLOSURE UNLESS A JUDGE ORDERS OTHERWISE."

15 (b) The statement required by this section shall not be  
16 required to be included in the notice of sale published pursuant  
17 to section 667-5(a)(1)(B). Nothing in this section shall be  
18 construed to set a minimum font size for the published notice of  
19 sale. The rights referred to in this notice do not apply in the  
20 case of the foreclosure of a lien by an association.

21 §667-E Recordation of notice of intent to foreclose. The  
22 foreclosing mortgagee may record a copy of the notice of intent



1 to foreclose with the assistant registrar of the land court or  
2 the bureau of conveyances, as the case may be, in a manner  
3 similar to recordation of notices of pendency of action under  
4 section 501-151 or section 634-51, or both, as applicable. The  
5 recorded notice shall have the same effect as a notice of pendency  
6 of action. From and after the recordation of the notice, any  
7 person who becomes a purchaser or encumbrancer of the mortgaged  
8 property shall be deemed to have constructive notice of the power  
9 of sale foreclosure and shall be bound by the foreclosure.

10 §667-F Location of public sale following nonjudicial power  
11 of sale foreclosure. The public sale of the mortgaged property  
12 following foreclosure shall be held only on grounds or at  
13 facilities under the administration of the State as follows:

14 (1) At a state building designated by the department of  
15 accounting and general services, for a public sale of  
16 mortgaged property located in the city and county of  
17 Honolulu; provided that the department of accounting  
18 and general services shall provide notification to the  
19 judiciary and the general public of the designated  
20 state building;



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

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

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

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

13 provided that no public sale shall be held on the grounds or at  
14 facilities under the administration of the judiciary."

15       §667-G Prohibited conduct; unfair or deceptive act or  
16 practice. It shall be a prohibited practice for any foreclosing  
17 mortgagee to engage in any of the 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;

21       (2) Specifying a fictitious place in the public notice of  
22       the public sale;



1       (3) Conducting a postponed public sale on a date other  
2           than the date described in the new public notice of  
3           the public sale;

4       (4) Delaying the conveyance of the conveyance document  
5           deed to a bona fide purchaser who purchases in good  
6           faith for more than forty-five days after the  
7           completion of the public sale;

8       (5) Completing nonjudicial foreclosure proceedings during  
9           short sale escrows for bid prices that are less than a  
10          purchaser's offer to purchase;

11       (6) Completing nonjudicial foreclosure proceedings during  
12          loan modification negotiations with the mortgagor; or

13       (7) Completing nonjudicial foreclosure proceedings against  
14          a mortgagor who has been accepted or is being  
15          evaluated for consideration into a federal loan  
16          modification program before obtaining a certificate or  
17          other documentation confirming that the mortgagor is  
18          no longer eligible or an active participant of that  
19          federal program.

20       §667-H Suspension of foreclosure actions by junior

21       lienholders. Upon initiation of a foreclosure action pursuant  
22       to this chapter by a foreclosing mortgagee as defined in section



1 667-21(b), no junior lienholder shall be permitted to initiate  
2 or continue a foreclosure until the foreclosure initiated by the  
3 foreclosing mortgagee has been concluded by either a judgment  
4 issued by a court pursuant to section 667-1, the recording of an  
5 affidavit after public sale pursuant to section 667-33, or the  
6 filing of a resolution document under the dispute resolution  
7 provisions of section 667-F; provided that a junior lienholder  
8 shall be permitted to initiate or continue with a foreclosure if  
9 permitted by the resolution document.

10 §667-I Unfair or deceptive act or practice. Any  
11 foreclosing mortgagee who violates this chapter shall be guilty  
12 of an unfair or deceptive act or practice under section 480-2."

13 SECTION 3. Section 501-151, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§501-151 Pending actions, judgments; recording of,  
16 notice. No writ of entry, action for partition, or any action  
17 affecting the title to real property or the use and occupation  
18 thereof or the buildings thereon, and no judgment, nor any  
19 appeal or other proceeding to vacate or reverse any judgment,  
20 shall have any effect upon registered land as against persons  
21 other than the parties thereto, unless a full memorandum  
22 thereof, containing also a reference to the number of



1 certificate of title of the land affected is filed or recorded  
2 and registered. Except as otherwise provided, every judgment  
3 shall contain or have endorsed on it the State of Hawaii general  
4 excise taxpayer identification number, the federal employer  
5 identification number, or the last four digits only of the  
6 social security number for persons, corporations, partnerships,  
7 or other entities against whom the judgment is rendered. If the  
8 judgment debtor has no social security number, State of Hawaii  
9 general excise taxpayer identification number, or federal  
10 employer identification number, or if that information is not in  
11 the possession of the party seeking registration of the  
12 judgment, the judgment shall be accompanied by a certificate  
13 that provides that the information does not exist or is not in  
14 the possession of the party seeking registration of the  
15 judgment. Failure to disclose or disclosure of an incorrect  
16 social security number, State of Hawaii general excise taxpayer  
17 identification number, or federal employer identification number  
18 shall not in any way adversely affect or impair the lien created  
19 upon recording of the judgment. This section does not apply to  
20 attachments, levies of execution, or to proceedings for the  
21 probate of wills, or for administration in a probate court;  
22 provided that in case notice of the pendency of the action has





1 been duly registered it is sufficient to register the judgment  
2 in the action within sixty days after the rendition thereof.

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

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

8 Notice of intent to foreclose as provided in section 667-E  
9 may be recorded.

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

14 SECTION 4. Section 607-5, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) The fees prescribed by the schedule in this section  
17 shall be paid to the clerk of the circuit court as costs of  
18 court by the person instituting the action or proceeding, or  
19 offering the paper for filing, or causing the document to be  
20 issued or the services to be performed in the circuit court;  
21 provided that nothing in the schedule shall apply to cases of  
22 adults charged with commission of a crime, or to proceedings



1 under section 571-11(1), (2), or (9), [~~e~~] to proceedings under  
2 chapter 333F or 334, [~~e~~] to small estates [~~+~~]including  
3 decedents' estates and protection of property of minors and  
4 persons under disability[~~+~~] when the amount payable is fixed by  
5 another statute[~~+~~], or to nonjudicial foreclosures converted to  
6 judicial proceedings pursuant to section 667-B; and provided  
7 further that the fees prescribed by subsection (c)(32) shall be  
8 deposited by the clerk of the circuit court into the judiciary  
9 computer system special fund pursuant to section 601-3.7.

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

12 **SCHEDULE**

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

19 SECTION 5. Section 667-3, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§667-3 Proceeds, how applied.** Mortgage and other  
22 creditors shall be entitled to payment according to the priority



1 of their liens, and not pro rata; and judgments of foreclosure  
2 and foreclosures under power of sale that are conducted in  
3 compliance with this part and for which an affidavit is recorded  
4 as required under section 667-5 shall operate to extinguish the  
5 liens of subsequent mortgages and liens of the same property,  
6 without forcing prior mortgagees or lienors to their right of  
7 recovery. The surplus after payment of the mortgage foreclosed,  
8 shall be applied pro tanto to the next junior mortgage[7] or  
9 lien, and so on to the payment, wholly or in part, of mortgages  
10 and liens junior to the one assessed."

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

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



1 (1) Give notice of the mortgagee's, successor's, or  
2 person's intention to foreclose the mortgage and of  
3 the sale of the mortgaged property [~~7~~, ~~by~~] as follows:

4 (A) By serving, not less than twenty-one days before  
5 the date of sale, written notice of the intent to  
6 foreclose on all persons entitled to notice under  
7 this part in the same manner as service of a  
8 civil complaint under chapter 634 and the Hawaii  
9 rules of civil procedure; provided that in the  
10 case of nonjudicial foreclosure of a lien by an  
11 association, the association shall mail the  
12 notice by certified or registered mail, not less  
13 than twenty-one days before the date of sale, to:

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

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

20 (B) By publication of the notice once in each of  
21 three successive weeks [(-)], constituting three  
22 publications [(-)] with the last publication to be



1 not less than fourteen days before the day of  
2 sale, in a newspaper having a general circulation  
3 in the county in which the mortgaged property  
4 lies; and

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

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

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

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

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

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



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

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

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



1 other real property; provided that nothing in this section shall  
2 prohibit any other mortgagee or person who holds a lien on the  
3 residential property subject to the nonjudicial foreclosure, whose  
4 lien is subordinate to the mortgage being foreclosed and is  
5 extinguished by the nonjudicial foreclosure sale, from pursuing a  
6 monetary judgment against an owner-occupant.

7       ~~[(e)]~~ (f) The affidavit and copy of the notice shall be  
8 recorded and indexed by the registrar, in the manner provided in  
9 chapter 501 or 502, as the case may be.

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

12       SECTION 7. Section 667-5.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "**§667-5.5 Foreclosure notice.** Notwithstanding any law or  
15 agreement to the contrary, any person who forecloses on a  
16 property under this part within a planned community, a  
17 condominium apartment or unit, or an apartment in a cooperative  
18 housing project shall notify, by ~~[way of]~~ registered or  
19 certified mail, the board of directors of the planned community  
20 association, the association of owners of the condominium  
21 project, or the cooperative housing project in which the  
22 property to be foreclosed is located~~[7]~~ of the foreclosure at



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

12 SECTION 8. Section 667-8, Hawaii Revised Statutes, is  
13 amended to read as follows:

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





1 those claiming under, by, or through the mortgagor, in the  
 2 property being foreclosed by exercise of a power of sale under  
 3 this part, including land whose title is not registered in the  
 4 land court under chapter 501, shall be deemed extinguished upon  
 5 the recordation of the affidavit in the bureau of conveyances or  
 6 in the office of the assistant registrar of the land court, as  
 7 the case may be, within thirty days of the date of sale of the  
 8 property at public auction."

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

11 **"§667-10 Power unaffected by transfer; surplus after sale.**  
 12 No sale or transfer by the mortgagor shall impair or annul any  
 13 right or power of attorney given in the mortgage to the  
 14 mortgagee to sell or transfer the mortgaged property, as  
 15 attorney or agent of the mortgagor, except as otherwise provided  
 16 by chapters 501 and 502. When public sale is made of the  
 17 mortgaged property under this [~~chapter,~~] part, the remainder of  
 18 the proceeds, if any, shall be paid over to the owner of the  
 19 mortgaged property[~~,~~] after deducting the amount of claim and  
 20 all expenses attending the [~~same,~~] claim."



1 SECTION 10. The judiciary shall adopt a form for the  
2 complaint for conversion of a nonjudicial foreclosure to a  
3 judicial foreclosure pursuant to section 667-B.

4 PART II

5 SECTION 11. Chapter 454M, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 "§454M- Unlicensed foreclosure actions voided. Any  
9 action taken in connection with a mortgage foreclosure under  
10 chapter 667 by a nonexempt person who engages in the business of  
11 mortgage servicing without a license as provided and required by  
12 this chapter shall be void for purposes of chapter 667."

13 SECTION 12. Chapter 667, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§667-J Invalid notice. (a) Any notices given pursuant  
17 to this chapter shall be valid only if issued in compliance with  
18 this section and by persons authorized to do so by a foreclosing  
19 mortgagee or lender pursuant to an affiliate statement signed by  
20 the foreclosing mortgagee or lender and recorded at the bureau  
21 of conveyances identifying the agency or affiliate relationship  
22 and the authority granted or conferred to the person.



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

5        (c) A mortgage servicer or an agent, employee, or  
6 representative of a mortgage servicer that provides any notice  
7 required by this chapter on behalf of a mortgagee or lender  
8 shall be listed in the affiliate statement filed by the  
9 foreclosing mortgagee or lender pursuant to subsection (a); and  
10 shall be licensed or exempt from licensing under chapter 454M.  
11 The agency relationship or affiliation of the mortgage servicer  
12 and the foreclosing mortgagee or lender and any authority  
13 granted or conferred to that mortgage servicer shall be  
14 described in the affiliate statement filed under both subsection  
15 (a) and section 454M-5(a)(4)(F)."

16        SECTION 13. Section 454M-2, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

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



1 SECTION 14. Section 454M-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

5 (1) Safeguard and account for any money handled for the  
6 borrower;

7 (2) Act with reasonable skill, care, timeliness,  
8 promptness, and diligence;

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

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

17 (A) The number of mortgage loans the servicer is  
18 servicing;

19 (B) The type and characteristics of [~~such~~] loans  
20 serviced in this State;



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



1           twenty percent share of the total mortgage loan  
2           service market in the State within the previous  
3           calendar year."

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

6           "~~[+]§454M-10[+]~~ **Penalty.** Any person who violates any  
7 provision of this chapter may be subject to an administrative  
8 fine of not more than [~~\$5,000~~] \$7,000 for each violation."

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

11           "~~[+]§667-32[+]~~ **Affidavit after public sale; contents.** (a)  
12 After the public sale [~~is~~] has been held, the foreclosing  
13 mortgagee shall sign an affidavit under penalty of perjury:

14           (1) Stating that the power of sale foreclosure was made  
15           pursuant to the power of sale provision in the  
16           mortgage;

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

19           (3) Summarizing what was done by the foreclosing  
20           mortgagee;

21           (4) Attaching a copy of the recorded notice of default~~[+]~~  
22           and intention to foreclose;



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

3 (6) Attaching a copy of the affiliate statement filed at  
4 the bureau of conveyances as required by section 667-  
5 J; and

6 (7) Attaching a copy of the statement filed with the  
7 commissioner of financial institutions of the mortgage  
8 servicer affiliations as required under section 454M-  
9 5(a)(4)(F), describing the authority held by the  
10 mortgage servicer through its affiliations.

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

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

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



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

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

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





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

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

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

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

18 (E) A public notice of the public sale was initially  
19 published in the classified section of the  
20 \_\_\_\_\_, a daily newspaper [e] with  
21 the largest general circulation expressly in the  
22 county where the mortgaged property is located,



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

8 (F) The public notice of the public sale was sent to  
9 the mortgagor, to the borrower, to the state  
10 director of taxation, to the director of finance  
11 of the county where the mortgaged property is  
12 located, and to the following:

13 \_\_\_\_\_ . The public notice was sent on  
14 the following dates and in the following manner:

15 \_\_\_\_\_ . Those dates were after the  
16 deadline date in the notice of default [7] and  
17 intention to foreclose, and those dates were at  
18 least sixty days before the date of the public  
19 sale;

20 (G) The public notice of the public sale was posted  
21 on the mortgaged property or on [~~such other~~]  
22 another real property of which the mortgaged



1 property is a part on \_\_\_\_\_ (date). That  
2 date was at least sixty days before the date of  
3 the public sale;

4 (H) Two public showings (open houses) of the  
5 mortgaged property were held (or were not held  
6 because the mortgagor did not cooperate);

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

9 \_\_\_\_\_ (date), at \_\_\_\_\_ (time), at the  
10 following location: \_\_\_\_\_. The  
11 highest successful bidder was \_\_\_\_\_  
12 \_\_\_\_\_ (name) with the highest  
13 successful bid price of \$ \_\_\_\_\_; and

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

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

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

21 "[+]§667-39[+] Right to enforce this part. (a) The  
22 foreclosing mortgagee, any other creditor [~~having~~] with a



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

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

9 **PART III**

10 SECTION 18. Chapter 667, Hawaii Revised Statutes, is  
11 amended by adding a new part to be appropriately designated and  
12 to read as follows:

13 **"PART . MANDATORY FORECLOSURE DISPUTE RESOLUTION**

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

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

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



1 "Facilitator" means the person assigned to facilitate the  
2 dispute resolution process required by this part.

3 **§667-L Dispute resolution required before foreclosure.**

4 (a) Before a circuit court may order a judgment of foreclosure  
5 pursuant to section 667-1 or before a public sale may be  
6 conducted pursuant to section 667-5 or 667-25 for a residential  
7 property that is occupied by the mortgagor as a primary  
8 residence, the foreclosing mortgagee shall, at the election of  
9 the mortgagor, participate in dispute resolution pursuant to  
10 this part to attempt to reach a negotiated agreement to avoid  
11 foreclosure or to mitigate damages where foreclosure is  
12 unavoidable.

13 (b) Dispute resolution required by this part shall be  
14 conducted through the center for alternative dispute resolution  
15 established by section 613-2.

16 **§667-M Notice of dispute resolution required.** (a) Notice  
17 of a foreclosure action in circuit court pursuant to section  
18 667-1, notice of a power of sale foreclosure filed or posted  
19 pursuant to section 667-5(b), or notice of default served  
20 pursuant to section 667-22(c) shall include notice that the  
21 foreclosing mortgagee is required, at the election of the



1 mortgagor, to participate in dispute resolution pursuant to this  
2 part for the purpose of attempting to avoid foreclosure.

3 (b) The notice required by subsection (a) shall include:

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

7 (2) Contact information for at least one local housing  
8 counseling agency approved by the United States  
9 Department of Housing and Urban Development;

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

16 (4) A description of the information that the mortgagor is  
17 required to provide to the center for alternative  
18 dispute resolution.

19 **§667-N Election of dispute resolution; stay of foreclosure**  
20 **proceedings.** (a) No later than thirty days after receipt of  
21 notice of dispute resolution under section 667-M, a mortgagor  
22 shall contact the center for alternative dispute resolution to



1 indicate whether or not the mortgagor elects to pursue dispute  
2 resolution pursuant to this part.

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

14 (c) If a mortgagor elects to waive dispute resolution or  
15 fails to give notice within the time specified to the center for  
16 alternative dispute resolution of the mortgagor's election to  
17 pursue dispute resolution, the center for alternative dispute  
18 resolution shall notify the court, the bureau of conveyances, or  
19 the land court, as appropriate, and the foreclosure process  
20 shall proceed pursuant to statute.

21 **§667-0 Dispute resolution process; requirements.** (a)  
22 Parties to a dispute resolution process conducted pursuant to



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

13 (b) Prior to a dispute resolution process scheduled  
14 pursuant to this part, the mortgagor and the mortgagee shall  
15 provide the center for alternative dispute resolution with any  
16 information that the center may request. Information required  
17 by this subsection shall include financial and employment  
18 information to be provided by the mortgagor and loan  
19 information, including the original or a certified copy of the  
20 mortgage instrument and promissory note, provided by the  
21 mortgagee.





1 (c) A dispute resolution pursuant to this part shall take  
2 place at a community mediation center or other site specified by  
3 the center for alternative dispute resolution and shall consist  
4 of one four-hour meeting of the parties and the facilitator  
5 during which the parties shall present the dispute and attempt  
6 to conclude the dispute resolution process. The facilitator may  
7 extend the time allowed for the dispute resolution at the  
8 facilitator's discretion. A dispute resolution conducted  
9 pursuant to this part shall use the calculations, assumptions,  
10 and forms established by the Federal Deposit Insurance  
11 Corporation and published in the Federal Deposit Insurance  
12 Corporation Loan Modification Program Guide as available on the  
13 Federal Deposit Insurance Corporation's publicly accessible  
14 website.

15 (d) If the mortgagee fails to attend the dispute  
16 resolution, fails to comply with the requirements of this part  
17 or the rules of the supreme court adopted pursuant to this part,  
18 or participates through a representative that does not meet the  
19 requirements of subsection (a), the facilitator shall notify the  
20 court, the bureau of conveyances, or the land court, as  
21 appropriate. After receipt of notice pursuant to this  
22 subsection, the court shall not issue a judgment of foreclosure



1 and neither the land court nor the bureau of conveyances shall  
2 record a notice of sale or other conveyance document for the  
3 subject property; provided that in the case of a judicial  
4 foreclosure, the court may order a loan modification according  
5 to terms determined proper by the court.

6 (e) If the mortgagor fails to attend the dispute  
7 resolution or fails to comply with the requirements of this part  
8 or the rules of the supreme court adopted pursuant to this part  
9 the facilitator shall notify the court, the bureau of  
10 conveyances, or the land court, as appropriate, that the  
11 requirements of this part have been met and the foreclosure  
12 process shall proceed pursuant to statute.

13 (f) If, despite both parties' participation in the dispute  
14 resolution process and compliance with the requirements of this  
15 part and the rules of the supreme court adopted pursuant to this  
16 part, the parties are not able to come to an agreement, the  
17 facilitator shall notify the court, the bureau of conveyances,  
18 or the land court, as appropriate, that the requirements of this  
19 part have been met. Upon receipt of notice pursuant to this  
20 subsection, the foreclosure process shall proceed pursuant to  
21 statute.



1 (g) If the parties to a dispute resolution come to an  
2 agreement to resolve the matters at issue in the dispute  
3 resolution before the dispute resolution scheduled pursuant to  
4 this section, the parties shall notify the facilitator of the  
5 resolution no later than two business days before the scheduled  
6 dispute resolution. No fees shall be refunded if the parties  
7 come to an agreement prior to or outside of a dispute resolution  
8 conducted pursuant to this part.

9 **§667-P Outcome of dispute resolution.** (a) When the  
10 parties to dispute resolution have complied with the  
11 requirements of this part and the rules of the supreme court  
12 adopted pursuant to this part and have reached an agreement, the  
13 agreement shall be memorialized in a resolution document which  
14 shall be filed with the circuit court, the land court, or the  
15 bureau of conveyances, as appropriate. The resolution document  
16 shall be a contract between the parties and shall be enforceable  
17 in a private contract action in a court of appropriate  
18 jurisdiction in the event of breach by either party. If the  
19 resolution document allows for foreclosure or other transfer of  
20 the subject property, the court shall order foreclosure and the  
21 land court or bureau of conveyances shall record a notice of



1 sale or other conveyance document upon presentation by the  
2 mortgagee, as appropriate.

3 (b) The parties to a dispute resolution may enter into a  
4 temporary modification agreement as an outcome of a dispute  
5 resolution conducted pursuant to this part; provided that any  
6 temporary modification agreements shall include an expiration  
7 date, which shall be a date certain upon which the parties shall  
8 have complied with their respective obligations under the  
9 agreement. A temporary modification agreement shall be a  
10 private contract memorialized, filed, and enforceable according  
11 to subsection (a).

12 **§667-Q Confidentiality.** Personal financial information  
13 and other sensitive personal information disclosed in the course  
14 of foreclosure dispute resolution pursuant to this part shall be  
15 confidential and not subject to public disclosure.

16 **§667-R Facilitator qualifications.** The supreme court  
17 shall adopt rules for qualifications and training of  
18 facilitators for foreclosure dispute resolution pursuant to this  
19 part; provided that facilitators shall possess sufficient  
20 knowledge in the areas of law, real estate, or finance and shall  
21 receive sufficient training to be able to effectuate the  
22 purposes of this part.



1       **§667-S Fee.** The center for alternative dispute resolution  
2 may charge a fee not to exceed \$400 for dispute resolution  
3 services provided pursuant to this part. Any fee for dispute  
4 resolution services shall be divided equally between the  
5 mortgagee and the mortgagor. All fees collected pursuant to  
6 this section shall be deposited into the foreclosure dispute  
7 resolution special fund established by section 667-V.

8       **§667-T Applicability.** This part shall apply to  
9 foreclosures, whether by action or by power of sale, of  
10 residential real property that is occupied by the mortgagor as a  
11 primary residence; provided that this part shall not apply to  
12 actions by an association to foreclose on a lien for amounts  
13 owed to the association.

14       **§667-U Rules.** The chief justice of the supreme court may  
15 adopt rules for the administration of this part including rules  
16 to:

- 17       (1) Ensure that dispute resolution occurs in an orderly  
18             and timely manner;
- 19       (2) Require each party to provide any information that the  
20             facilitator deems necessary;
- 21       (3) Protect the dispute resolution process from abuse and  
22             ensure that each party complies with this part and the



1 rules adopted by the supreme court pursuant to this  
2 part;

3 (4) Establish qualifications and training requirements for  
4 facilitators; and

5 (5) Protect personal financial information and other  
6 sensitive personal information obtained in the course  
7 of foreclosure dispute resolution from disclosure.

8 **§667-V Foreclosure dispute resolution special fund.** (a)

9 There is established outside of the state treasury a special  
10 fund to be known as the foreclosure dispute resolution special  
11 fund to be administered by the judiciary to implement the  
12 mandatory dispute resolution in foreclosure proceedings required  
13 by this part. The fund shall consist of contributions from the  
14 sources identified in subsections (c) and (d). Interest earned  
15 from the balance of the fund shall become a part of the fund.  
16 The judiciary shall adopt rules regarding the distribution of  
17 moneys from the fund.

18 (b) The judiciary may allow expenditure of moneys from the  
19 fund directly by the center for alternative dispute resolution.

20 (c) All persons who bring an action in the circuit court  
21 for foreclosure pursuant to section 667-1, who record an  
22 affidavit in the land court pursuant to section 501-118, or who



1 record a conveyance document in the bureau of conveyances for a  
2 property subject to a nonjudicial power of sale foreclosure  
3 shall pay a fee of \$ \_\_\_\_\_ for deposit into the foreclosure  
4 dispute resolution special fund. The fee established pursuant  
5 to this subsection shall be assessed only one time for each  
6 subject property, regardless of the number of filings related to  
7 the subject property.

8 (d) Fees for foreclosure dispute resolution charged  
9 pursuant to section 667-S shall be deposited into the  
10 foreclosure dispute resolution special fund."

11 SECTION 19. Section 667-1, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§667-1 Foreclosure by action. The circuit court may  
14 assess the amount due upon a mortgage, whether of real or  
15 personal property, without the intervention of a jury[7] and,  
16 subject to the requirements of part \_\_\_\_\_, shall render judgment  
17 for the amount awarded[7] and the foreclosure of the mortgage.  
18 Execution may be issued on the judgment[7] as ordered by the  
19 court."

20 SECTION 20. Section 667-5, Hawaii Revised Statutes, is  
21 amended as follows:

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



1        "(a) When a power of sale is contained in a mortgage [7]  
2 and where the mortgagee, the mortgagee's successor in interest,  
3 or any person authorized by the power to act in the premises [7]  
4 desires to foreclose under power of sale upon breach of a  
5 condition of the mortgage, the mortgagee, successor, or person  
6 shall be represented by an attorney who is licensed to practice  
7 law in the State and is physically located in the State. The  
8 attorney shall:

9        (1) Give notice of the mortgagee's, successor's, or  
10        person's intention to foreclose the mortgage, the  
11        notice of the mortgagor's right to elect to  
12        participate in dispute resolution as required by  
13        section 667-L or to convert the nonjudicial power of  
14        sale foreclosure to a judicial foreclosure pursuant to  
15        section 667-B, and of the sale of the mortgaged  
16        property, by publication of the notice once in each of  
17        three successive weeks [7], constituting three  
18        publications [7], with the last publication to be not  
19        less than fourteen days before the day of sale, in a  
20        newspaper having a general circulation in the county  
21        in which the mortgaged property lies; and





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

3 2. By amending subsection (e) to read:

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

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

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

- 18 (1) The name and address of the current mortgagee;  
19 (2) The name and last known address of the mortgagor, the  
20 borrower, and any guarantor;  
21 (3) The address or a description of the location of the  
22 mortgaged property, [~~and~~] the tax map key number, and



1           the certificate of title or transfer certificate of  
2           title number if within the jurisdiction of the land  
3           court of the mortgaged property;

4           (4) The description of the default [~~7~~ and]; provided that  
5           if the default is a monetary default, an itemization  
6           of the delinquent amount [~~shall be given~~];

7           (5) The action [~~that must be taken~~] required to cure the  
8           default [~~7~~] including the delinquent amount [~~to cure~~  
9           ~~the default, together with~~] and the estimated amount  
10           of the foreclosing mortgagee's attorney's fees and  
11           costs, and all other fees and costs related to the  
12           default estimated to be incurred by the foreclosing  
13           mortgagee [~~related to the default~~] by the deadline  
14           date;

15           (6) The date by which the default must be cured, which  
16           [~~deadline date~~] shall be at least [~~sixty~~] ninety days  
17           after the date of the notice of default [~~7~~] and  
18           intention to foreclose;

19           (7) [~~That~~] A statement that if the default is not cured by  
20           the deadline date stated in the notice of default [~~7~~]  
21           and intention to foreclose, the entire unpaid balance  
22           of the moneys owed to the mortgagee under the mortgage



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

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

12 (9) Notice of the right of the mortgagor to elect to  
13 participate in a dispute resolution process as  
14 required by part or to convert the action to a  
15 judicial foreclosure pursuant to section 667-B;  
16 provided that conversion to a judicial foreclosure may  
17 subject the mortgagor to a deficiency judgment that  
18 would not be available under a nonjudicial  
19 foreclosure;

20 (10) A statement that if the mortgagor elects to  
21 participate in dispute resolution pursuant to part  
22 , the mortgagor shall not be eligible to convert



1           the foreclosure action to a judicial foreclosure  
2           pursuant to section 667-B; and  
3       (11) A statement that if the mortgagor elects to convert  
4           the foreclosure action to a judicial foreclosure  
5           pursuant to section 667-B, the mortgagor shall not be  
6           eligible to participate in a dispute resolution  
7           pursuant to part       ; provided that a court may, in  
8           its discretion, order dispute resolution in any  
9           judicial foreclosure before the court.

10       (b) The notice of default and intention to foreclose shall  
11 also contain wording substantially similar to the following in  
12 all capital letters[+] in fourteen point font:

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

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

20           AFTER THE DEADLINE DATE IN THIS NOTICE, TWO  
21           PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE  
22           LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS



1 (OWNERS) OF THE PROPERTY SO AGREE. TO SHOW THAT ALL  
2 OWNERS AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER,  
3 ALL OWNERS MUST SIGN A LETTER SHOWING THEY AGREE. ALL  
4 OWNERS MUST SEND THE SIGNED LETTER TO THIS OFFICE AT  
5 THE ADDRESS GIVEN IN THIS NOTICE.

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

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

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

19 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE  
20 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED  
21 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO  
22 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT



1 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO  
2 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR  
3 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT  
4 REQUESTED."

5 (c) The notice of default and intention to foreclose shall  
6 include:

7 (1) A copy of the original mortgage agreement and any  
8 subsequent mortgage agreements and assignments;

9 (2) The promissory note signed by both the mortgagor and  
10 the mortgagee and any endorsements and allonges on the  
11 promissory note; and

12 (3) Any other documents that amend or alter the terms of  
13 the original mortgage agreement that were signed by  
14 the mortgagor and the mortgagee or any successors or  
15 assigns of the mortgagor or the mortgagee.

16 (d) The notice of default and intention to foreclose shall  
17 include contact information for at least one local housing  
18 counseling agency approved by the United States Department of  
19 Housing and Urban Development.

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



- 1 (1) The mortgagor and the borrower[+] in the same manner  
2 as service of a civil complaint under chapter 634 and  
3 the Hawaii rules of civil procedure;
- 4 (2) Any prior or junior creditors [~~having~~] who have a  
5 recorded lien on the mortgaged property before the  
6 recordation of the notice of default and intention to  
7 foreclose under section 667-23;
- 8 (3) The state director of taxation;
- 9 (4) The director of finance of the county where the  
10 mortgaged property is located; and
- 11 (5) Any other person entitled to receive notice under  
12 [~~section 667-5.5.~~] this part."

13 SECTION 22. Section 667-24, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§667-24[+] **Cure of default.** (a) If the default is  
16 cured as required by the notice of default[+] and intention to  
17 foreclose or if the parties have reached an agreement to avoid  
18 foreclosure pursuant to part \_\_\_\_\_, the foreclosing mortgagee  
19 shall rescind the notice of default[+] and intention to  
20 foreclose. Within fourteen days of the date of the cure[+] or  
21 an agreement reached by the parties through a dispute resolution  
22 process pursuant to part \_\_\_\_\_, the foreclosing mortgagee shall



1 [se] notify any person who was served with the notice of  
2 default[-] and intention to foreclose. If the notice of default  
3 and intention to foreclose was recorded, a release of the notice  
4 of default and intention to foreclose shall be recorded.

5 (b) If the default is not cured as required by the notice  
6 of default[-] and intention to foreclose, the parties have not  
7 reached an agreement to avoid foreclosure pursuant to part ,  
8 and the mortgagor has not elected to convert the action into a  
9 judicial foreclosure pursuant to section 667-B, the foreclosing  
10 mortgagee, without filing a court action and without going to  
11 court, may foreclose the mortgage under power of sale to sell  
12 the mortgaged property at a public sale."

13 SECTION 23. Section 667-25, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) [The] Subject to the requirements of part , public  
16 sale of the mortgaged property shall take place on the later of  
17 the following:

18 (1) At least sixty days after the public notice of the  
19 public sale is distributed under section 667-27; or

20 (2) At least fourteen days after the date of the  
21 publication of the third public notice advertisement  
22 under section 667-27.





1 (b) The public sale of the mortgaged property shall be  
2 held only on the grounds or at facilities under the  
3 administration of the State in the county where the mortgaged  
4 property is located[. ~~However, if the borrower, the mortgagor,~~  
5 ~~and the foreclosing mortgagee all agree in writing, the public~~  
6 ~~sale may be held in a different county in the State.] as  
7 follows:~~

8 (1) At a state building designated by the department of  
9 accounting and general services, for a public sale of  
10 mortgaged property located in the city and county of  
11 Honolulu; provided that the department of accounting  
12 and general services shall provide notification to the  
13 judiciary and the general public of the designated  
14 state building;

15 (2) At a state facility or on public land in Hilo, for a  
16 public sale of mortgaged property located in the  
17 eastern portion of the county of Hawaii;

18 (3) At a state facility or on public land in Kona, for a  
19 public sale of mortgaged property located in the  
20 western portion of the county of Hawaii;



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

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

7       provided that no public sale shall be held on the grounds or at  
8       facilities under the administration of the judiciary. The  
9       public sale shall be held during business hours on a business  
10      day."

11       SECTION 24. The center for alternative dispute resolution  
12      shall submit a report to the legislature no later than regarding  
13      the implementation and operations of the alternative dispute  
14      resolution process created by this Act, including outcomes of  
15      dispute resolutions and any proposals for amendment to the  
16      process, no later than twenty days prior to the convening of the  
17      2012, 2013, 2014, 2014, and 2016 regular legislative sessions.

18       SECTION 25. There is appropriated out of the general  
19      revenues of the State of Hawaii the sum of \$                      or so  
20      much thereof as may be necessary for fiscal year 2011-2012 to  
21      pay for the initial costs associated with establishing a dispute  
22      resolution program for use by mortgagors and mortgagees to



1 attempt to avoid or mitigate the damages of foreclosure in the  
2 center for alternative dispute resolution.

3 The sum appropriated shall be deposited into the  
4 foreclosure dispute resolution special fund established pursuant  
5 to section 667-V and shall be expended by the judiciary for the  
6 purposes of this Act; provided that upon receipt of sufficient  
7 moneys to sustain its purpose, the foreclosure dispute  
8 resolution special fund shall reimburse the general fund for the  
9 appropriation made pursuant to this Act.

10 **PART IV**

11 SECTION 26. Section 667-21, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) As used in this part:

14 "Association" has the same meaning as the term is defined  
15 in section 514B-3 and section 421J-2.

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

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



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

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

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

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

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



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

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

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

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

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

15 "Nonjudicial foreclosure" means foreclosure pursuant to the  
16 power of sale foreclosure process under part II.

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

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



- 1        (1) Owns an interest in the residential property that is  
2                    encumbered by the mortgage being foreclosed; and
- 3        (2) Has lived in the residential property as the person's  
4                    primary residence for a continuous period of not less  
5                    than two hundred days immediately preceding the date  
6                    on which the notice is served.

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

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

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



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

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

7       SECTION 27. Section 667-23, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       "~~[+]§667-23[+]~~ **Recordation of notice of default~~[\_]~~ and**  
10 **intention to foreclose.** Before the deadline date in the notice  
11 of default~~[\_]~~ and intention to foreclose, the notice [~~of~~  
12 ~~default~~] shall be recorded in a recordable form [~~shall be~~  
13 ~~recorded~~] in a manner similar to recordation of notices of  
14 pendency of action under section 501-151 or section 634-51 [~~\_or~~  
15 ~~both,~~] as applicable. The recorded notice of default and  
16 intention to foreclose shall have the same effect as a notice of  
17 pendency of action. From and after the recordation of the  
18 notice of default~~[\_]~~ and intention to foreclose, any person who  
19 becomes a purchaser or encumbrancer of the mortgaged property  
20 shall be deemed to have constructive notice of the power of sale  
21 foreclosure and shall be bound by the foreclosure."



1 SECTION 28. Section 667-26, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

11 SECTION 29. Section 667-27, Hawaii Revised Statutes, is  
12 amended as follows:

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

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

- 16 (1) The date, time, and place of the public sale;
- 17 (2) The dates and times of the two open houses of the  
18 mortgaged property[-] or [~~if~~] that there will not [~~te~~]  
19 be any open houses [~~, the public notice shall so~~  
20 ~~state~~];

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





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

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

17 "(c) If the default is not cured as required by the notice  
18 of default[7] and intention to foreclose, the foreclosing  
19 mortgagee shall have a copy of the public notice of the public  
20 sale of the mortgaged property:

- 21 (1) Mailed or delivered to the mortgagor and the borrower  
22 at their respective last known addresses;



- 1 (2) Mailed or delivered to any prior or junior creditors  
2 [having] who have a recorded lien on the mortgaged  
3 property before the recordation of the notice of  
4 default and intention to foreclose under section 667-  
5 23;
- 6 (3) Mailed or delivered to the state director of taxation;
- 7 (4) Mailed or delivered to the director of finance of the  
8 county where the mortgaged property is located;
- 9 (5) Posted on the mortgaged property or on [~~such other~~]  
10 another real property of which the mortgaged property  
11 is a part; and
- 12 (6) Mailed or delivered to any other person entitled to  
13 receive notice under section 667-5.5.
- 14 (d) The foreclosing mortgagee shall have the public notice  
15 of the public sale published in the classified section of [a]  
16 the daily newspaper [e] with the largest general circulation  
17 expressly in the county where the mortgaged property is located.  
18 The public notice shall be published once each week for three  
19 consecutive weeks [ + ], constituting three publications [ + ]. The  
20 public sale shall take place no sooner than fourteen days after  
21 the date of the publication of the third public notice  
22 advertisement."



1 SECTION 30. 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 by the foreclosing mortgagee at the date,  
7 time, and place of the last scheduled public sale; and
- 8 (2) Provided~~[7]~~ upon request~~[7]~~ to any other person who is  
9 entitled to receive the notice of default and  
10 intention to foreclose under section [~~667-22(e).~~] 667-  
11 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~~]  
21 another real property of which the mortgaged property is a  
22 part~~[7]~~ and [~~it~~] shall be mailed or delivered to the mortgagor,



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

9 SECTION 31. 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~~] to have been held when the mortgaged  
 18 property is declared by the foreclosing mortgagee [~~as being~~] to  
 19 have been sold to the successful bidder. When the public sale  
 20 [~~is~~] has been held, the successful bidder at the public sale, as  
 21 the purchaser, shall make a nonrefundable downpayment to the  
 22 foreclosing mortgagee of not less than ten per cent of the



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

7 SECTION 32. Section 667-31, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

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

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

19 "[+]§667-41[+] **Public information requirement.** [All]  
20 Beginning on September 1, 2011, all financial institutions,  
21 mortgagees, lenders, business entities and organizations without  
22 limitation, and persons[7] who intend to use the power of sale



1 foreclosure ~~[under]~~ provided by this part~~[7]~~ under the  
2 conditions required by this part, shall also develop  
3 informational materials to educate and inform borrowers and  
4 mortgagors. These materials shall be made available to the  
5 public~~[7]~~ and provided to the mortgagors of all mortgage  
6 agreements entered into, including ~~[the]~~ borrowers at the time  
7 of application for a mortgage ~~[or]~~, loan, or other contract  
8 containing a power of sale foreclosure provision. These  
9 materials, ~~[among other things]~~, along with other information,  
10 shall inform the borrower that the financial institution and  
11 other business entities and persons who are authorized under  
12 this part to exercise the power of sale foreclosure~~[7]~~ in the  
13 event of the borrower's default, have the option of pursuing  
14 either a judicial or nonjudicial foreclosure as provided by law.  
15 These informational materials shall fully and completely explain  
16 ~~[these]~~ remedies~~[7]~~ of judicial and nonjudicial foreclosure in  
17 simple and understandable terms."

18 **PART V**

19 SECTION 34. There shall be a three-month moratorium on  
20 foreclosure actions for property located in this State to begin  
21 on the effective date of this Act. No foreclosure by action or  
22 by power of sale shall proceed, no court shall issue an order



1 for foreclosure pursuant to section 667-1, Hawaii Revised  
2 Statutes, the registrar of the land court shall not record an  
3 affidavit pursuant to section 501-118, Hawaii Revised Statutes,  
4 and the registrar of the bureau of conveyances shall not record  
5 a conveyance document with the bureau of conveyances following a  
6 power of sale foreclosure during the moratorium period  
7 established by this Act.

8 SECTION 35. In codifying the new sections added by  
9 sections 2, 11, 12, and 18 of this Act, the revisor of statutes  
10 shall substitute appropriate section numbers for the letters  
11 used in designating the new sections in this Act.

12 SECTION 36. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 37. This Act shall take effect on July 1, 2050;  
15 provided that section 18 shall be repealed on June 30, 2016.



**Report Title:**

Mortgage Foreclosures; Appropriation

**Description:**

Authorizes the conversion of nonjudicial power of sale foreclosures to judicial foreclosures in certain cases; authorizes recordation of notice of default and intent to foreclose; specifies allowable locations for public auction of foreclosed properties; specifies prohibited conduct; requires suspension of actions by junior lienholders during the pendency of foreclosure; provides that violations of chapter 667 by foreclosing mortgagees shall be unfair and deceptive trade practices; prohibits deficiency judgments after nonjudicial foreclosure; specifies that the interest of a mortgagor is extinguished upon recordation of affidavit of sale; imposes requirements for mortgage servicers including physical presence within the State; creates dispute resolution process for nonjudicial foreclosures; creates dispute resolution special fund; creates requirements for notice of default; makes conforming amendments; makes appropriation. Effective 7/1/2050. (SD1)

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

