
A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

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PART I

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SECTION 1. The legislature finds that Act 162, Session Laws of Hawaii 2010, established a mortgage foreclosure task force to develop policies and procedures to improve the way mortgage foreclosures are conducted in the State. Act 162 required the task force to submit its findings and recommendations, including any proposed legislation, to the legislature for the regular sessions of 2011 and 2012.

The task force held several public meetings over the legislative interim of 2010 to discuss the various items for review raised under Act 162. Based upon these discussions, the task force adopted recommendations, including proposed legislation, in its report to the legislature for the regular session of 2011. Some of the task force's recommendations were included in Act 48, Session Laws of Hawaii 2011, a far-reaching mortgage foreclosure reform measure that, among other things:



1 (1) Temporarily authorized mortgagors who are occupying,
2 as a primary residence, real property that is subject
3 to nonjudicial foreclosure to either:

4 (A) Participate in the mortgage foreclosure dispute
5 resolution program established under Act 48; or

6 (B) Convert the nonjudicial foreclosure to a judicial
7 foreclosure;

8 (2) Imposed a temporary moratorium on all new nonjudicial
9 foreclosures conducted under part I of chapter 667,
10 Hawaii Revised Statutes; and

11 (3) Specified prohibited conduct and consequences of
12 violations for foreclosing mortgagees, including
13 making any violation of the mortgage foreclosure law
14 under chapter 667, Hawaii Revised Statutes, an unfair
15 or deceptive act or practice subject to the enhanced
16 penalties under chapter 480, Hawaii Revised Statutes.

17 The task force met again over several public meetings
18 during the legislative interim of 2011 to continue its work
19 under Act 162. The focus of these meetings was divided among
20 these major issues:

21 (1) The new mortgage foreclosure provisions of Act 48,
22 Session Laws of Hawaii 2011;



1 (2) Matters involving condominium and other homeowner
2 associations, including association liens and the
3 collection of unpaid assessments; and

4 (3) Mortgage foreclosure counseling and dispute resolution
5 issues.

6 Based upon its deliberations on these issues, the task force
7 adopted further recommendations in its report to the legislature
8 for the regular session of 2012.

9 The purpose of this Act is to implement the recommendations
10 of the mortgage foreclosure task force submitted to the
11 legislature for the regular session of 2012, and other best
12 practices to address mortgage foreclosures and related issues.

13 **PART II**

14 **SECTION 2.** Chapter 421J, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By adding two new sections to be appropriately
17 designated and to read:

18 "§421J-A Association fiscal matters; lien for assessments.

19 (a) All sums assessed by the association but unpaid for the
20 share of the assessments chargeable to any unit shall constitute
21 a lien on the unit with the priority stated in the association
22 documents. If the association documents do not provide for a



1 lien, the association's lien on the unit shall have priority
2 over all other liens, except:

3 (1) Liens for taxes and assessments lawfully imposed by
4 governmental authority against the unit;

5 (2) All sums unpaid on any mortgage of record that was
6 recorded prior to the recordation of a notice of a
7 lien by the association and any costs and expenses,
8 including attorneys' fees, provided in such mortgages;
9 and

10 (3) Liens of a condominium association that are secured by
11 the unit;

12 provided that a lien recorded by the association shall expire
13 two years from the date of recordation unless renewed by the
14 association prior to the expiration of the lien.

15 The lien of the association may be foreclosed by action or
16 by nonjudicial or power of sale foreclosure procedures set forth
17 in chapter 667, by the managing agent or board, acting on behalf
18 of the association; provided that no association may foreclose a
19 lien against any unit that arises solely from fines, penalties,
20 legal fees, or late fees. In any association foreclosure, the
21 unit owner shall be required to pay a reasonable rental for the
22 unit, if so provided in the association documents or the law,



1 and the plaintiff in the foreclosure shall be entitled to the
2 appointment of a receiver to collect the rental owed by the unit
3 owner or any tenant of the unit. If the association is the
4 plaintiff, it may request that its managing agent be appointed
5 as receiver to collect the rental from the tenant. The managing
6 agent or board, acting on behalf of the association, may bid on
7 the unit at foreclosure sale and acquire and hold, lease,
8 mortgage, and convey the unit. Action to recover a money
9 judgment for unpaid assessments shall be maintainable without
10 foreclosing or waiving the lien securing the unpaid assessments
11 owed.

12 (b) Except as provided in subsection (e), when the
13 mortgagee of a mortgage of record or other purchaser of a unit
14 obtains title to the unit as a result of foreclosure of the
15 mortgage, the acquirer of title and the acquirer's successors
16 and assigns shall not be liable for the share of the assessments
17 by the association chargeable to the unit that became due prior
18 to the acquisition of title to the unit by the acquirer. The
19 unpaid share of assessments shall be deemed to be assessments
20 collectible from all of the unit owners, including the acquirer
21 and the acquirer's successors and assigns. The mortgagee of
22 record or other purchaser of the unit shall be deemed to acquire



1 title and shall be required to pay the unit's share of
2 assessments beginning:

3 (1) Thirty-six days after the order confirming the sale to
4 the purchaser has been filed with the court;

5 (2) Sixty days after the hearing at which the court grants
6 the motion to confirm the sale to the purchaser;

7 (3) Thirty days after the public sale in a nonjudicial
8 power of sale foreclosure conducted pursuant to
9 chapter 667; or

10 (4) Upon the recording of the instrument of conveyance;
11 whichever occurs first; provided that the mortgagee of record or
12 other purchaser of the unit shall not be deemed to acquire title
13 under paragraph (1), (2), or (3), if transfer of title is
14 delayed past the thirty-six days specified in paragraph (1), the
15 sixty days specified in paragraph (2), or the thirty days
16 specified in paragraph (3), when a person who appears at the
17 hearing on the motion or a party to the foreclosure action
18 requests reconsideration of the motion or order to confirm sale,
19 objects to the form of the proposed order to confirm sale,
20 appeals the decision of the court to grant the motion to confirm
21 sale, or the debtor or mortgagor declares bankruptcy or is
22 involuntarily placed into bankruptcy. In any such case, the



1 mortgagee of record or other purchaser of the unit shall be
2 deemed to acquire title upon recordation of the instrument of
3 conveyance.

4 (c) Except as provided in section 667-B(c), no unit owner
5 shall withhold any assessment claimed by the association. A
6 unit owner who disputes the amount of an assessment may request
7 a written statement clearly indicating:

8 (1) The amount of regular and special assessments included
9 in the assessment, including the due date of each
10 amount claimed;

11 (2) The amount of any penalty, late fee, lien filing fee,
12 and any other charge included in the assessment;

13 (3) The amount of attorneys' fees and costs, if any,
14 included in the assessment;

15 (4) That under Hawaii law, a unit owner has no right to
16 withhold assessments for any reason;

17 (5) That a unit owner has a right to demand mediation to
18 resolve disputes about the amount or validity of an
19 association's assessment; provided that the unit owner
20 immediately pays the assessment in full and keeps
21 assessments current; and



1 (6) That payment in full of the assessment does not
2 prevent the unit owner from contesting the assessment
3 or receiving a refund of amounts not owed.

4 Nothing in this section shall limit the rights of a unit owner
5 to the protection of all fair debt collection procedures
6 mandated under federal and state law.

7 (d) A unit owner who pays an association the full amount
8 claimed by the association may file a claim against the
9 association in court or require the association to mediate under
10 section 421J-13 to resolve any disputes concerning the amount or
11 validity of the association's claim.

12 (e) In conjunction with or as an alternative to
13 foreclosure proceedings under subsection (a), where a unit is
14 owner-occupied, the association may authorize its managing agent
15 or board, after sixty days written notice to the unit owner and
16 to the unit's first mortgagee of the nonpayment of the unit's
17 share of the assessments, to terminate the delinquent unit's
18 access to the common elements and cease supplying a delinquent
19 unit with any and all services normally supplied or paid for by
20 the association. Any terminated services and privileges shall
21 be restored upon payment of all delinquent assessments, but need
22 not be restored until payment in full is received.



1 (f) Before the board or managing agent may take the
2 actions permitted under subsection (e), the board shall adopt a
3 written policy providing for such actions and have the policy
4 approved by a majority vote of the unit owners at an annual or
5 special meeting of the association or by the written consent of
6 a majority of the unit owners unless the association documents
7 already permit the process.

8 (g) Subject to this subsection and subsections (h) and
9 (i), the board may specially assess the amount of the unpaid
10 regular monthly common assessments for assessments against a
11 person who, in a judicial or nonjudicial power of sale
12 foreclosure, purchases a delinquent unit; provided that:

13 (1) A purchaser who holds a mortgage on a delinquent unit
14 that was recorded prior to the filing of a notice of
15 lien by the association and who acquires the
16 delinquent unit through a judicial or nonjudicial
17 foreclosure proceeding, including purchasing the
18 delinquent unit at a foreclosure auction, shall not be
19 obligated to make, nor be liable for, payment of the
20 special assessment as provided for under this
21 subsection; and



1 (2) A person who subsequently purchases the delinquent
2 unit from the mortgagee referred to in paragraph (1)
3 shall be obligated to make, and shall be liable for,
4 payment of the special assessment provided for under
5 this subsection; and provided further that the
6 mortgagee or subsequent purchaser may require the
7 association to provide, at no charge, a notice of the
8 association's intent to claim a lien against the
9 delinquent unit for the amount of the special
10 assessment, prior to the subsequent purchaser's
11 acquisition of title to the delinquent unit. The
12 notice shall state the amount of the special
13 assessment, how that amount was calculated, and the
14 legal description of the unit.

15 (h) The amount of the special assessment assessed under
16 subsection (g) shall not exceed the total amount of unpaid
17 regular monthly common assessments that were assessed during the
18 twelve months immediately preceding the completion of the
19 judicial or nonjudicial power of sale foreclosure.

20 (i) For purposes of subsections (g) and (h), the following
21 definitions shall apply, unless the context requires otherwise:

22 "Completion" means:



1 (1) In a nonjudicial power of sale foreclosure, when the
2 affidavit required under section 667-33 is recorded;
3 and

4 (2) In a judicial foreclosure, when a purchaser is deemed
5 to acquire title pursuant to subsection (b).

6 "Regular monthly common assessments" does not include:

7 (1) Any other special assessment, except for a special
8 assessment imposed on all units as part of a budget
9 adopted pursuant to the association documents;

10 (2) Late charges, fines, or penalties;

11 (3) Interest assessed by the association;

12 (4) Any lien arising out of the assessment; or

13 (5) Any fees or costs related to the collection or
14 enforcement of the assessment, including attorneys'
15 fees and court costs.

16 (j) The cost of a release of any lien filed pursuant to
17 this section shall be paid by the party requesting the release.

18 §421J-B Association fiscal matters; collection of unpaid
19 assessments from tenants or rental agents. (a) If a unit owner
20 rents or leases the unit and is in default for thirty days or
21 more in the payment of the unit's share of the regular
22 assessments, the board, for as long as the default continues,



1 may demand in writing and receive each month from any tenant
 2 occupying the unit or rental agent renting the unit, an amount
 3 sufficient to pay all sums due from the unit owner to the
 4 association, including interest, if any, but the amount shall
 5 not exceed the tenant's rent due each month. The tenant's
 6 payment under this section shall discharge that amount of
 7 payment from the tenant's rent obligation, and any contractual
 8 provision to the contrary shall be void as a matter of law.

9 (b) Before taking any action under this section, the board
 10 shall give to the delinquent unit owner written notice of its
 11 intent to collect the rent owed. The notice shall:

- 12 (1) Be sent both by first-class and certified mail;
- 13 (2) Set forth the exact amount the association claims is
 14 due and owing by the unit owner; and
- 15 (3) Indicate the intent of the board to collect such
 16 amount from the rent, along with any other amounts
 17 that become due and remain unpaid.

18 (c) The unit owner shall not take any retaliatory action
 19 against the tenant for payments made under this section.

20 (d) The payment of any portion of the unit's share of
 21 regular assessments by the tenant pursuant to a written demand
 22 by the board is a complete defense, to the extent of the amount



1 demanded and paid by the tenant, in an action for nonpayment of
2 rent brought by the unit owner against a tenant.

3 (e) The board may not demand payment from the tenant
4 pursuant to this section if:

5 (1) A commissioner or receiver has been appointed to take
6 charge of the premises pending a mortgage foreclosure;

7 (2) A mortgagee is in possession pending a mortgage
8 foreclosure; or

9 (3) The tenant is served with a court order directing
10 payment to a third party.

11 (f) In the event of any conflict between this section and
12 any provision of chapter 521, the conflict shall be resolved in
13 favor of this section; provided that if the tenant is entitled
14 to an offset of rent under chapter 521, the tenant may deduct
15 the offset from the amount due to the association, up to the
16 limits stated in chapter 521. Nothing herein precludes the unit
17 owner or tenant from seeking equitable relief from a court of
18 competent jurisdiction or seeking a judicial determination of
19 the amount owed.

20 (g) Before the board may take the actions permitted under
21 subsection (a), the board shall adopt a written policy providing
22 for the actions and have the policy approved by a majority vote



1 of the unit owners at an annual or special meeting of the
2 association or by the written consent of a quorum of the unit
3 owners."

4 2. By adding a new definition to section 421J-2 to be
5 appropriately inserted and to read:

6 "Assessment" means funds collected by an association from
7 association members to operate and manage the association,
8 maintain property within the planned community for the common
9 use or benefit of association members, or provide services to
10 association members."

11 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding a new part I to read:

14 "PART I. GENERAL PROVISIONS

15 §667-1 Definitions. As used in this chapter:

16 "Approved budget and credit counselor" means a Hawaii-based
17 budget and credit counseling agency that has received approval
18 from a United States trustee or bankruptcy administrator to
19 provide instructional courses concerning personal financial
20 management pursuant to title 11 United States Code section 111.

21 "Approved housing counselor" means a Hawaii-based housing
22 counseling agency that has received approval from the United



1 States Department of Housing and Urban Development to provide
2 housing counseling services pursuant to section 106(a)(2) of the
3 Housing and Urban Development Act of 1968, title 12 United
4 States Code section 1701x, as the agency appears on the United
5 States Department of Housing and Urban Development website.

6 "Assessment" has the same meaning as "assessment" in
7 chapter 421J and "common expense" in chapter 514B.

8 "Association" has the same meaning as defined in sections
9 421J-2 and 514B-3.

10 "Association documents" has the same meaning as defined in
11 section 421J-2 and includes the "declaration" defined in section
12 514B-3 and the "bylaws" described in section 514B-108,
13 respectively.

14 "Association lien" has the same meaning as the lien
15 established under section 421J-A or 514B-146.

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

18 "Department" means the department of commerce and consumer
19 affairs.

20 "Director" means the director of commerce and consumer
21 affairs.



1 "Dispute resolution" means a facilitated negotiation under
2 part V between a mortgagor and mortgagee for the purpose of
3 reaching an agreement for mortgage loan modification or other
4 agreement in an attempt to avoid foreclosure or to mitigate
5 damages if foreclosure is unavoidable.

6 "Foreclosure notice" means notice of default and intention
7 to foreclose prepared pursuant to section 667-22.

8 "Mailed" means to be sent by first class mail, postage
9 prepaid, unless otherwise expressly directed in this chapter.

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

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

17 "Mortgaged property" means the property that is subject to
18 the lien of the mortgage.

19 "Mortgagee" means the current holder of record of the
20 mortgagee's or the lender's interest under the mortgage or the
21 current mortgagee's or lender's duly authorized agent.



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

5 "Neutral" means a person who is a dispute resolution
6 specialist assigned to facilitate the dispute resolution process
7 required by part V.

8 "Nonjudicial foreclosure" means foreclosure under power of
9 sale.

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

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

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

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



1 "Power of sale" or "power of sale foreclosure" means a
2 nonjudicial foreclosure when the mortgage contains, authorizes,
3 permits, or provides for a power of sale, a power of sale
4 foreclosure, a power of sale remedy, or a nonjudicial
5 foreclosure.

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

11 "Record" means to record or file a document in the office
12 of the assistant registrar of the land court under chapter 501
13 or to record a document in the bureau of conveyances under
14 chapter 502, or both, as applicable.

15 "Residential property" means real property that is improved
16 and used for residential purposes.

17 "Serve", when referring to providing notice of intention to
18 foreclose or notice of default and intention to foreclose
19 pursuant to a nonjudicial foreclosure, means to have service of
20 the notice of default and intention to foreclose made in
21 accordance with the service of process or the service of summons
22 under the Hawaii rules of civil procedure and under sections



1 634-35 and 634-36, excluding however, any return or affidavit of
2 service obligations required therein.

3 "Time share interest" has the same meaning as in section
4 514E-1.

5 "Unit" has the same meaning as in sections 421J-2 and 514B-
6 3.

7 "Unit owner" has the same meaning as "member" in section
8 421J-2 and "unit owner" in section 514B-3."

9 2. By adding a new part to be appropriately designated and
10 to read:

11 "PART . ASSOCIATION ALTERNATE POWER OF SALE
12 FORECLOSURE PROCESS

13 §667-A Alternate power of sale process. The process in
14 this part is an alternative power of sale process for
15 associations to the foreclosure by action and the foreclosure by
16 power of sale in part IA.

17 §667-B Notice of default and intention to foreclose;
18 contents; distribution; alternative remedies for failure to
19 serve. (a) When a unit owner has failed to pay an assessment,
20 and when the association intends to conduct a power of sale
21 foreclosure under this part, the association shall prepare a
22 written notice of default and intention to foreclose addressed



1 to the unit owner. The notice of default and intention to
2 foreclose shall state:

- 3 (1) The name and address of the association;
- 4 (2) The name and last known address of the unit owners;
- 5 (3) With respect to the unit, the address or a description
6 of its location, tax map key number, and certificate
7 of title or transfer certificate of title number if
8 registered in the land court;
- 9 (4) The description of the default or, if the default is a
10 monetary default, an itemization of the delinquent
11 amount;
- 12 (5) The action required to cure the default, including the
13 delinquent amount and the estimated amount of the
14 association's attorney's fees and costs, and all other
15 fees and costs related to the default estimated to be
16 incurred by the association by the deadline date;
- 17 (6) The date by which the default must be cured, which
18 shall be within sixty days after service of the notice
19 of default and intention to foreclose;
- 20 (7) A statement that if the default is not cured by the
21 deadline date stated in the notice of default and
22 intention to foreclose, the entire unpaid balance of



1 the moneys owed to the association will become due,
2 that the association intends to conduct a power of
3 sale foreclosure to sell the unit at a public sale
4 without any court action and without going to court,
5 and that the association or any other person may
6 acquire the unit at the public sale;

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

12 (9) Notice of the right of the unit owner to submit a
13 payment plan within thirty days pursuant to subsection
14 (c).

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

19 "IF THE DEFAULT ON THE PAYMENT OF ASSESSMENTS
20 CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE
21 UNIT MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT
22 ACTION 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 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE
5 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED
6 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO
7 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT
8 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO
9 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
10 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
11 REQUESTED."

12 (c) A unit owner may submit a payment plan within thirty
13 days after service of a notice of default and intention to
14 foreclose on the unit owner. The unit owner shall submit the
15 payment plan to the association or its attorney by certified
16 mail return receipt requested or by hand delivery. A unit owner
17 may also cure the default within sixty days after service of a
18 notice of default and intention to foreclose on the unit owner
19 by paying the association the full amount of the default,
20 including the foreclosing association's attorneys' fees and
21 costs, and all other fees and costs related to the default that
22 are incurred or estimated to be incurred by the foreclosing



1 association. The association shall not reject a reasonable
2 payment plan. From and after the date that the unit owner gives
3 written notice to the association of its intent to cure the
4 default or timely submits a payment plan, any nonjudicial
5 foreclosure of the lien shall be stayed during the sixty-day
6 period to cure the default or during the term of the payment
7 plan or a longer period that is agreed upon by the parties. A
8 unit owner's failure to strictly perform any agreed-upon payment
9 plan shall entitle the association to pursue its remedies
10 without further delay.

11 For purposes of this section, "reasonable payment plan"
12 means a plan that provides for:

- 13 (1) Timely payment of all assessments that become due
14 after the date that the payment plan is proposed; and
15 (2) Additional monthly payments of an amount sufficient to
16 cure the default, within a reasonable period under the
17 circumstances as determined by the board of directors
18 in its discretion; provided that a period of up to
19 twelve months shall be deemed reasonable; and provided
20 further that the board of directors shall have the
21 discretion to agree to a payment plan in excess of
22 twelve months.



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

4 (e) The association shall have the notice of default and
5 intention to foreclose served on:

6 (1) The unit owner;

7 (2) Any prior or junior creditors who have a recorded lien
8 on the unit before the recordation of the notice of
9 default and intention to foreclose under section
10 667-C;

11 (3) The state director of taxation;

12 (4) The director of finance of the county where the unit
13 is located; and

14 (5) Any other person entitled to receive notice under
15 section 667-5.5.

16 (f) If the association is unable to serve the notice of
17 default and intention to foreclose on the unit owner or any
18 other party listed in subsection (e)(2) to (5) within sixty
19 days, the association may:

20 (1) File a special proceeding in the circuit court of the
21 circuit in which the unit is located, for permission



1 to proceed with a nonjudicial foreclosure by serving
2 the unit owner only by publication and posting;

3 (2) Proceed with a nonjudicial foreclosure of the unit;
4 provided that if the association proceeds without the
5 permission of the court, the association shall not be
6 entitled to obtain a deficiency judgment against the
7 unit owner, and the unit owner shall have one year
8 from the date the association records the deed in the
9 nonjudicial foreclosure to redeem the unit; or

10 (3) Take control of the unit if the unit is unoccupied,
11 after giving notice to the unit owner at the unit
12 owner's last known address as shown on the records of
13 the association or as determined by the association as
14 part of its due diligence to serve notice to the
15 owner. The association's authority to take control of
16 the unit pursuant to this paragraph shall be exercised
17 solely for the purpose of renting the unit to generate
18 rental income to pay the unit owner's delinquency, and
19 the association shall acquire no legal title to the
20 unit. In addition, the association shall credit the
21 net rental proceeds generated from the rental of the
22 unit to the owner's delinquency. For purposes of this



1 paragraph, "net rental proceeds" means the rental
2 proceeds remaining each month after deducting:

- 3 (A) The unit's regular monthly assessments that come
4 due while the association controls the unit
5 pursuant to this subsection;
- 6 (B) Any rental agent commissions; and
- 7 (C) Expenses incurred by the association in
8 maintaining the unit in rentable condition.

9 If the unit owner pays the full amount of the unit
10 owner's delinquency to the association, the
11 association shall return control of the unit to the
12 unit owner; provided that the full amount of the
13 owner's delinquency shall be calculated by deducting
14 the net rental proceeds, if any, from the owner's
15 delinquency.

16 §667-C Recordation of notice of default and intention to
17 foreclose. Before the deadline date in the notice of default
18 and intention to foreclose, the notice may be recorded in a
19 recordable form in a manner similar to recordation of notices of
20 pendency of action under section 501-151 or section 634-51, or
21 both, as applicable. The recorded notice of default and
22 intention to foreclose shall have the same effect as a notice of



1 pendency of action. From and after the recordation of the
2 notice of default and intention to foreclose, any person who
3 becomes a purchaser or encumbrancer of the unit shall be deemed
4 to have constructive notice of the power of sale foreclosure and
5 shall be bound by the foreclosure.

6 §667-D Cure of default. (a) If the default is cured as
7 required by the notice of default and intention to foreclose, or
8 if the parties have agreed on a payment plan, the association
9 shall rescind the notice of default and intention to foreclose.
10 Within fourteen days of the date of the cure or an agreement on
11 a payment plan, the association shall so notify any person who
12 was served with the notice of default and intention to
13 foreclose. If the notice of default and intention to foreclose
14 was recorded, a release of the notice of default and intention
15 to foreclose shall be recorded.

16 (b) If the default is not cured as required by the notice
17 of default and intention to foreclose, or the parties have not
18 agreed on a payment plan, the association, without filing a
19 court action and without going to court, may foreclose the
20 association's lien under power of sale to sell the unit at a
21 public sale.



1 §667-E Date of public sale of unit; place of sale. (a)

2 The public sale of the unit shall take place on the later of the
3 following:

4 (1) At least sixty days after the public notice of the
5 public sale is distributed under section 667-F; or

6 (2) At least fourteen days after the date of the
7 publication of the third public notice advertisement
8 under section 667-F(d).

9 (b) The public sale of the unit shall be held only in the
10 county where the unit is located; provided that the public sale
11 shall be held only on grounds or at facilities under the
12 administration of the State, as follows:

13 (1) At the state capitol, for a public sale of a unit
14 located in the city and county of Honolulu;

15 (2) At a state facility in Hilo, for a public sale of a
16 unit located in the districts of Hamakua, North Hilo,
17 South Hilo, or Puna;

18 (3) At a state facility in Kailua-Kona, for a public sale
19 of a unit located in the districts of North Kohala,
20 South Kohala, North Kona, South Kona, or Kau;



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

4 (5) At a state facility in the county seat of Kauai, for a
5 public sale of a unit located in the county of Kauai;
6 as designated by the department of accounting and general
7 services; provided further that no public sale shall be held on
8 grounds or at facilities under the administration of the
9 judiciary. The public sale shall be held during business hours
10 on a business day.

11 (c) The public sale of the unit shall be conducted by the
12 association on the date, at the time, and at the place described
13 in the public notice of the public sale.

14 §667-F Public notice of public sale; contents;
15 distribution; publication. (a) The association shall prepare
16 the public notice of the public sale. The public notice shall
17 state:

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

19 (2) The unpaid balance of the moneys owed to the
20 association;

21 (3) A description of the unit, including the address and
22 the tax map key number of the unit;



- 1 (4) The name of the unit owner;
- 2 (5) The name of the association;
- 3 (6) The name of any prior or junior creditors having a
- 4 recorded lien on the unit before the recordation of
- 5 the notice of default and intention to foreclose under
- 6 section 667-C;
- 7 (7) The name, the address in the State, and the telephone
- 8 number in the State of the person in the State
- 9 conducting the public sale; and
- 10 (8) The terms and conditions of the public sale.
- 11 (b) The public notice shall also contain wording
- 12 substantially similar to the following in all capital letters:

13 "THE DEFAULT UNDER THE ASSOCIATION

14 DOCUMENTS MAY BE CURED NO LATER THAN THREE

15 BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC

16 SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT

17 THAT WOULD BE OWED TO THE ASSOCIATION PLUS

18 THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS,

19 AND ALL OTHER FEES AND COSTS INCURRED BY THE

20 FORECLOSING ASSOCIATION RELATED TO THE

21 DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN

22 THE ASSOCIATION AND THE UNIT OWNER. THERE



1 IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT
2 OF REDEMPTION AFTER THAT TIME. IF THE
3 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL
4 BE CANCELED."

5 (c) If the default is not cured as required by the notice
6 of default and intention to foreclose, the association shall
7 have a copy of the public notice of the public sale of the unit:

- 8 (1) Mailed or delivered to the unit owners at their
9 respective last known addresses;
- 10 (2) Mailed or delivered to any prior or junior creditors
11 having a recorded lien on the unit before the
12 recordation of the notice of default and intention to
13 foreclose under section 667-C;
- 14 (3) Mailed or delivered to the state director of taxation;
- 15 (4) Mailed or delivered to the director of finance of the
16 county where the unit is located;
- 17 (5) Posted on the unit or on such other real property of
18 which the unit is a part; and
- 19 (6) Mailed or delivered to any other person entitled to
20 receive notice under section 667-5.5 or 667-21.5.

21 (d) The association shall have the public notice of the
22 public sale printed in not less than seven-point font and



1 published in the classified section of a newspaper of general
2 circulation in the specific county in which the mortgaged
3 property is located. For the purposes of this subsection, a
4 newspaper is of general circulation if the newspaper:

5 (1) Contains news of a general nature; and

6 (2) Is distributed within the county where the mortgaged
7 property is located:

8 (A) At least weekly;

9 (B) For a minimum of six months unless interrupted by
10 strike, natural disaster, or act of war or
11 terror; and

12 (C) To a minimum of one per cent of the residents of
13 the county, as determined by the last decennial
14 United States census and as verified by an
15 independent audit.

16 A person may apply to the circuit court for an order confirming
17 a newspaper to be of general circulation for purposes of this
18 subsection, which the court shall grant upon proof of compliance
19 with this subsection. The public notice shall be published once
20 each week for three consecutive weeks, constituting three
21 publications. The public sale shall take place no sooner than



1 fourteen days after the date of the publication of the third
2 public notice advertisement.

3 **§667-G Postponement, cancellation of sale.** (a) The
4 public sale may be either postponed or canceled by the
5 association. Notice of the postponement or the cancellation of
6 the public sale shall be:

7 (1) Announced by the association at the date, time, and
8 place of the last scheduled public sale; and

9 (2) Provided to any other person who is entitled to
10 receive the notice of default under section 667-B.

11 (b) If there is a postponement of the public sale of the
12 unit, a new public notice of the public sale shall be published
13 once in the format described in section 667-F. The new public
14 notice shall state that it is a notice of a postponed sale. The
15 public sale shall take place no sooner than fourteen days after
16 the date of the publication of the new public notice. Not less
17 than fourteen days before the date of the public sale, a copy of
18 the new public notice shall be posted on the unit or on another
19 real property of which the unit is a part, and it shall be
20 mailed or delivered to the unit owner[7] and to any other person
21 entitled to receive notice under section 667-B(e).



1 (c) Upon the fourth postponement of every series of four
2 consecutive postponements, the association shall follow all of
3 the public notice of public sale requirements of section 667-F,
4 including the requirements of mailing and posting under section
5 667-F(c) and of publication under section 667-F(d).

6 (d) The default under the association documents may be
7 cured no later than three business days before the date of the
8 public sale of the unit by paying the entire amount that would
9 be owed to the association if the payments under the association
10 documents had not been accelerated, plus the association's
11 attorney's fees and costs, and all other fees and costs incurred
12 by the association related to the default, unless otherwise
13 agreed to between the association and the unit owner. There is
14 no right to cure the default or any right of redemption after
15 that time. If the default is so cured, the public sale shall be
16 canceled.

17 §667-H Authorized bidder; successful bidder. Any person,
18 including the association, shall be authorized to bid for the
19 unit at the public sale and to purchase the unit. The highest
20 bidder who meets the requirements of the terms and conditions of
21 the public sale shall be the successful bidder. The public sale
22 shall be considered as being held when the unit is declared by



1 the association as being sold to the successful bidder. When
2 the public sale is held, the successful bidder at the public
3 sale, as the purchaser, shall make a nonrefundable downpayment
4 to the association of not less than ten per cent of the highest
5 successful bid price. If the successful bidder is the
6 association, the downpayment requirement may be satisfied by
7 offset and a credit bid up to the amount of the lien debt.

8 §667-I Successful bidder's failure to comply; forfeiture
9 of downpayment. If the successful bidder later fails to comply
10 with the terms and conditions of the public sale or fails to
11 complete the purchase within forty-five days after the public
12 sale is held, the downpayment shall be forfeited by that bidder.
13 The forfeited downpayment shall be credited by the association
14 first towards the association's attorney's fees and costs, then
15 towards the fees and costs of the power of sale foreclosure, and
16 any balance towards the moneys owed to the association. The
17 association, in its discretion, may then accept the bid of the
18 next highest bidder who meets the requirements of the terms and
19 conditions of the public sale or may begin the public sale
20 process again.

21 §667-J Conveyance of property on payment of purchase
22 price; distribution of sale proceeds. (a) After the purchaser



1 completes the purchase by paying the full purchase price and the
2 costs for the purchase, the unit shall be conveyed to the
3 purchaser by a conveyance document. The conveyance document
4 shall be in a recordable form and shall be signed by the
5 association in the association's name. The unit owner shall not
6 be required to sign the conveyance document.

7 (b) From the sale proceeds, after paying:

- 8 (1) Liens for taxes and assessments lawfully imposed by
9 governmental authority against the unit;
10 (2) The association's attorney's fees and costs;
11 (3) The fees and costs; of the power of sale foreclosure;
12 (4) The moneys owed to the association; and
13 (5) All other liens and encumbrances in the order of
14 priority as a matter of law,

15 the balance of the sale proceeds shall be distributed by the
16 association to junior creditors having valid liens on the unit
17 in the order of their priority and not pro rata. Any remaining
18 surplus after payment in full of all valid lien creditors shall
19 be distributed to the unit owner.

20 (c) Lien creditors prior to the association shall not be
21 forced to their right of recovery. However, the association and
22 any prior lien creditor may agree in writing that the proceeds



1 from the sale will be distributed by the association to the
2 prior lien creditor towards the payment of moneys owed to the
3 prior lien creditor before any moneys are paid to the
4 association.

5 §667-K Affidavit after public sale; contents. (a) After
6 the public sale is held, the association shall sign an affidavit
7 under penalty of perjury:

- 8 (1) Stating that the power of sale foreclosure was made
9 pursuant to the power of sale provision in the law or
10 association documents;
- 11 (2) Stating that the power of sale foreclosure was
12 conducted as required by this part;
- 13 (3) Summarizing what was done by the association;
- 14 (4) Attaching a copy of the recorded notice of default and
15 intention to foreclose; and
- 16 (5) Attaching a copy of the last public notice of the
17 public sale.

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

- 21 (1) I am duly authorized to represent or act on behalf of
22 _____ (name of association)



1 ("association") regarding the following power of sale
 2 foreclosure. I am signing this affidavit in
 3 accordance with the alternate power of sale
 4 foreclosure law (Chapter 667, Part , Hawaii Revised
 5 Statutes);

6 (2) The association is a "association" as defined in the
 7 power of sale foreclosure law;

8 (3) The power of sale foreclosure is of an association
 9 lien. If the lien was recorded, the lien was dated
 10 _____, and recorded in the
 11 _____ (bureau of conveyances or office
 12 of the assistant registrar of the land court) as
 13 _____ (recordation information). The
 14 unit is located at: _____ (address or
 15 description of location) and is identified by tax map
 16 key number: _____. The legal
 17 description of the property, including the certificate
 18 of title or transfer certificate of title number if
 19 registered with the land court, is attached as Exhibit
 20 "A";

21 (4) Pursuant to the power of sale provision of law or
 22 association documents, the power of sale foreclosure



1 was conducted as required by the power of sale
2 foreclosure law. The following is a summary of what
3 was done:

4 (A) A notice of default and intention to foreclose
5 was served on the mortgagor, the borrower, and
6 the following person: _____. The
7 notice of default and intention to foreclose was
8 served on the following date and in the following
9 manner: _____;

10 (B) The date of the notice of default and intention
11 to foreclose was _____ (date).
12 The deadline in the notice for curing the default
13 was _____ (date), which deadline
14 date was at least sixty days after the date of
15 the notice;

16 (C) The notice of default and intention to foreclose
17 was recorded before the deadline date in the
18 _____ (bureau of conveyances or
19 office of the assistant registrar of the land
20 court). The notice was recorded on
21 _____ (date) as document no.
22 _____ . A copy of the recorded



1 notice is attached as Exhibit "1";

2 (D) The default was not cured by the deadline date in

3 the notice of default and intention to foreclose;

4 (E) A public notice of the public sale was initially

5 published in the classified section of the

6 _____, in accordance with section

7 667-F(d), Hawaii Revised Statutes, once each week

8 for three consecutive weeks on the following

9 dates: _____. A copy of the

10 affidavit of publication for the last public

11 notice of the public sale is attached as Exhibit

12 "2". The date of the public sale was

13 _____ (date). The last

14 publication was not less than fourteen days

15 before the date of the public sale;

16 (F) The public notice of the public sale was sent to

17 the unit owner, to the state director of

18 taxation, to the director of finance of the

19 county where the unit is located, and to the

20 following: _____. The public

21 notice was sent on the following dates and in the

22 following manner: _____. Those



1 dates were after the deadline date in the notice
2 of default and intention to foreclose, and those
3 dates were at least sixty days before the date of
4 the public sale;

5 (G) The public notice of the public sale was posted
6 on the unit or on such other real property of
7 which the unit is a part on _____
8 (date). That date was at least sixty days before
9 the date of the public sale;

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

18 (I) At the time the public sale was held, the default
19 was not cured; and

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

21 §667-L Recordation of affidavit, conveyance document;
22 effect. (a) The affidavit required under section 667-K and the



1 conveyance document shall be recorded no earlier than ten days
2 after the public sale is held but not later than forty-five days
3 after the public sale is held. The affidavit and the conveyance
4 document may be recorded separately and on different days.

5 After the recordation, the association shall mail or deliver a
6 recorded copy to those persons entitled to receive the public
7 notice of the public sale under section 667-F(c).

8 (b) When both the affidavit and the conveyance document
9 are recorded:

10 (1) The sale of the unit is considered completed;

11 (2) All persons claiming by, through, or under the
12 mortgagor and all other persons having liens on the
13 unit junior to the lien of the association shall be
14 forever barred of and from any and all right, title,
15 interest, and claims at law or in equity in and to the
16 unit and every part of the unit, except as otherwise
17 provided by law;

18 (3) The lien of the association and all liens junior in
19 priority to the lien of a association shall be
20 automatically extinguished from the unit; and

21 (4) The purchaser shall be entitled to immediate and
22 exclusive possession of the unit.



1 (c) The mortgagor and any person claiming by, through, or
2 under the mortgagor and who is remaining in possession of the
3 unit after the recordation of the affidavit and the conveyance
4 document shall be considered a tenant at sufferance subject to
5 eviction or ejectment. The purchaser may bring an action in the
6 nature of summary possession under chapter 666, ejectment, or
7 trespass or may bring any other appropriate action in a court
8 where the unit is located to obtain a writ of possession, a writ
9 of assistance, or any other relief. In any such action, the
10 court shall award the prevailing party its reasonable attorneys'
11 fees and costs and all other reasonable fees and costs, all of
12 which are to be paid for by the non-prevailing party.

13 §667-M Recordation; full satisfaction of debt by borrower.
14 The recordation of both the conveyance document and the
15 affidavit shall not operate as full satisfaction of the debt
16 owed by the unit owner to the association unless the sale
17 proceeds from the unit or the amounts paid by a purchaser under
18 the special assessment permitted by section 421J-A or 514B-146
19 are sufficient to satisfy the unit owner's debt to the
20 association, including the association's legal fees and costs.
21 The debts of other lien creditors are unaffected except as
22 provided in this part.



1 §667-N Prohibited conduct. It shall be a prohibited
2 practice for any association to engage in any of the following
3 practices:

- 4 (1) Holding a public sale on a date, at a time, or at a
5 place other than that described in the public notice
6 of the public sale or a properly noticed postponement;
7 (2) Specifying a fictitious place in the public notice of
8 the public sale;
9 (3) Conducting a postponed public sale on a date other
10 than the date described in the new public notice of
11 the public sale; or
12 (4) Completing or attempting to complete nonjudicial
13 foreclosure proceedings against a unit owner in
14 violation of section 667-B(c)."

15 3. By adding a new section to part III to be designated as
16 section 667-60 and to read:

17 "§667-60 Unfair or deceptive act or practice; transfer of
18 title. (a) Any foreclosing mortgagee who engages in any of the
19 following violations of this chapter shall have committed an
20 unfair or deceptive act or practice under section 480-2:



- 1 (1) Failing to provide a borrower or mortgagor with, or
2 failing to serve as required, the information required
3 by section 667-22 or 667-55;
- 4 (2) Failing to publish, or to post, information on the
5 mortgaged property, as required by section 667-27 or
6 667-28;
- 7 (3) Failing to take any action required by section 667-24
8 if the default is cured or an agreement is reached;
- 9 (4) Engaging in conduct prohibited under section 667-56;
- 10 (5) Holding a public sale in violation of section 667-25
11 or 667-26;
- 12 (6) Failing to include the information required by section
13 667-27 or 667-28 in a public notice of public sale;
- 14 (7) Failing to provide the public information required by
15 section 667-41;
- 16 (8) Completing a nonjudicial foreclosure while a stay is
17 in effect under section 667-83, as that section read
18 at any time prior to its repeal on September 30, 2014,
19 pursuant to Act 48, Session Laws of Hawaii 2011;
- 20 (9) Failing to distribute sale proceeds as required by
21 section 667-31;



1 (10) Making any false statement in the affidavit of public
2 sale required by section 667-32; or
3 (11) Attempting to collect a deficiency in violation of
4 section 667-38;
5 (b) Notwithstanding subsection (a), the transfer of title
6 to the purchaser of the property as a result of a foreclosure
7 under this chapter shall only be subject to avoidance under
8 section 480-12 for a violation described in subsection (a)(1) to
9 (8) if the violation is shown to be substantial and material;
10 provided that a foreclosure sale shall not be subject to
11 avoidance under section 480-12 for a violation of section 667-
12 56(5).
13 (c) Any action to void the transfer of title to the
14 purchaser of property under this chapter shall be filed in the
15 circuit court of the circuit within which the foreclosed
16 property is situated no later than one hundred eighty days
17 following the recording of the affidavit after public sale
18 pursuant to section 667-33. If no such action is filed within
19 the one hundred eighty-day period, title to the property shall
20 be deemed conclusively vested in the purchaser free and clear of
21 any claim by the mortgagor or any person claiming by, through,
22 or under the mortgagor."



1 4. By adding a new section to part IA, as designated in
2 section 11 of this Act, to be appropriately designated and to
3 read:

4 "§667- Attorney affirmation in judicial foreclosure.
5 Any attorney who files on behalf of a plaintiff seeking to
6 foreclose on a residential property under this part shall sign
7 and submit an affirmation that the attorney has verified the
8 accuracy of the documents submitted, under penalty of perjury
9 and subject to applicable rules of professional conduct. The
10 affirmation shall be in substantially the following form:

11 _____
12 _____ CIRCUIT COURT OF THE STATE OF HAWAII
13 _____
14 _____
15 _____ Plaintiff,
16 _____ AFFIRMATION
17 v. _____
18 _____
19 _____ Defendant(s)
20 _____
21 Mortgaged Premises:
22 _____
23 _____

Note: During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities, including failure to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits which falsely attest to such review and to other critical facts in the foreclosure process; and "robotic signature" of documents.

* * *

34 [_____] , Esq., pursuant to Hawaii Revised Statutes §667- ____ and under the
35 penalties of perjury, affirms as follows:

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1. I am an attorney at law duly licensed to practice in the state of Hawaii and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. On [date], I communicated with the following representative or representatives of Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents and records relating to this case for factual accuracy; and (b) confirmed the factual accuracy of the allegations set forth in the Complaint and any supporting affidavits or affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith.

Name	Title
_____	_____
_____	_____
_____	_____

3. Based upon my communication with [persons specified in item 2], as well as upon my own inspection and other reasonable inquiry under the circumstances, I affirm that, to the best of my knowledge, information, and belief, the Summons, Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law and that plaintiff has legal standing to bring this foreclosure action. I understand my continuing obligation to amend this Affirmation in light of newly discovered material facts following its filing.

4. I am aware of my obligations under Hawaii Rules of Professional Conduct.

DATED:

N.B.: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose."

PART III

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

1 "§454M-10 Penalty. Any person who violates any provision
2 of this chapter may be subject to an administrative fine of [at
3 ~~least \$1,000 and~~] not more than \$7,000 for each violation;
4 provided that \$1,000 of the aggregate fine amount shall be
5 deposited into the mortgage foreclosure dispute resolution
6 special fund established pursuant to section 667-86."

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

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



1 or other entities against whom the judgment is rendered. If the
2 judgment debtor has no social security number, State of Hawaii
3 general excise taxpayer identification number, or federal
4 employer identification number, or if that information is not in
5 the possession of the party seeking registration of the
6 judgment, the judgment shall be accompanied by a certificate
7 that provides that the information does not exist or is not in
8 the possession of the party seeking registration of the
9 judgment. Failure to disclose or disclosure of an incorrect
10 social security number, State of Hawaii general excise taxpayer
11 identification number, or federal employer identification number
12 shall not in any way adversely affect or impair the lien created
13 upon recording of the judgment. This section does not apply to
14 attachments, levies of execution, or to proceedings for the
15 probate of wills, or for administration in a probate court;
16 provided that in case notice of the pendency of the action has
17 been duly registered it is sufficient to register the judgment
18 in the action within sixty days after the rendition thereof.

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

21 Notice of the pendency of an action in a United States
22 District Court, as well as a court of the State of Hawaii, may



1 be recorded.

2 Notice of opening a dispute resolution case as provided in
3 section 667-79 may be recorded.

4 Foreclosure notice as provided in section [~~667-14~~] 667-23
5 may be recorded.

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

10 SECTION 6. Section 501-241, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Without limiting the generality of subsection (a),
13 the following instruments need not be registered pursuant to
14 this chapter to be effective and shall be recorded in the bureau
15 of conveyances pursuant to chapter 502:

16 (1) An assignment or other instrument transferring a
17 leasehold time share interest;

18 (2) A mortgage or other instrument granting a lien on a
19 leasehold time share interest;

20 (3) An agreement of sale for the sale of a leasehold time
21 share interest. Any such agreement of sale shall be



- 1 subject to section 502-85 and shall not be subject to
2 section 501-101.5;
- 3 (4) A lien or notice of lien pertaining to a leasehold
4 time share interest in favor of a time share owners
5 association, an association of owners under chapter
6 514A or 514B, or a similar homeowner's association;
- 7 (5) A judgment, decree, order of court, attachment, writ,
8 or other process against a leasehold time share
9 interest;
- 10 (6) A mechanic's or materialman's lien or other lien upon
11 a leasehold time share interest;
- 12 (7) A lis pendens or notice of pendency of action, notice,
13 affidavit, demand, certificate, execution, copy of
14 execution, officer's return, or other instrument
15 relating to a leasehold time share interest and
16 otherwise required or permitted to be recorded or
17 registered in connection with the enforcement or
18 foreclosure of any lien, whether by way of power of
19 sale pursuant to [~~section 667-5,~~] chapter 667 or
20 otherwise;
- 21 (8) A power of attorney given by the owner of a leasehold
22 time share interest or the vendor or vendee under an



1 agreement of sale for the sale of a leasehold time
 2 share interest, a mortgagee or other lienor having a
 3 mortgage or lien upon a leasehold time share interest,
 4 or another party holding a claim or encumbrance
 5 against or an interest in a leasehold time share
 6 interest; or

7 (9) An instrument assigning, extending, continuing,
 8 dissolving, discharging, releasing in whole or in
 9 part, reducing, canceling, extinguishing, or otherwise
 10 modifying or amending any of the foregoing
 11 instruments."

12 SECTION 7. Section 501-263, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "[+]§501-263[+] Effect of deregistration in specific
 15 cases. Notwithstanding section 501-262(a)(3), the following
 16 documents, instruments, and papers need not be registered
 17 pursuant to this chapter to be effective and shall be recorded
 18 in the bureau of conveyances pursuant to chapter 502:

19 (1) Any document, instrument, or paper assigning,
 20 extending, continuing, dissolving, discharging,
 21 releasing in whole or in part, reducing, canceling,
 22 extinguishing, or otherwise modifying or amending any



1 of the following documents, instruments, or papers
2 that have been registered pursuant to this chapter and
3 that pertain to deregistered land:

4 (A) A mortgage;

5 (B) An agreement of sale for the sale of a fee time
6 share interest or interest in other deregistered
7 land. After the recordation of the certificate
8 of title, any agreement of sale shall be subject
9 to section 502-85 and shall not be subject to
10 section 501-101.5;

11 (C) A correction deed, correction mortgage, or other
12 document, instrument, or paper correcting a
13 document, instrument, or paper registered
14 pursuant to this chapter;

15 (D) A lien or claim of lien on a fee time share
16 interest held or claimed by a time share owners
17 association, an association of apartment owners,
18 or other homeowners' association or a lien or
19 claim on an interest in other deregistered land
20 held by a lienor or person claiming a lien;

21 (E) A lease that demises a fee time share interest or
22 interest in other deregistered land;



- 1 (F) An order of court, attachment, writ, or other
2 process against a fee time share interest or
3 interest in other deregistered land;
- 4 (G) A mechanic's or materialman's lien or other lien
5 upon a fee time share interest or interest in
6 other deregistered land;
- 7 (H) A lis pendens or notice of pendency of action,
8 notice, affidavit, demand, certificate,
9 execution, copy of execution, officer's return,
10 or other instrument relating to a fee time share
11 interest or interest in other deregistered land
12 and otherwise required or permitted to be
13 recorded or registered in connection with the
14 enforcement or foreclosure of any lien, whether
15 by way of power of sale pursuant to [~~a power of~~
16 ~~sale under section 667-5,~~] chapter 667 or
17 otherwise; or
- 18 (I) A power of attorney given by the owner of a fee
19 time share interest or interest in other
20 deregistered land or the vendor or vendee under
21 an agreement of sale for the sale of a fee time
22 share interest or interest in other deregistered



1 land, a mortgagee or other lienor having a
 2 mortgage or lien upon a fee time share interest
 3 or interest in other deregistered land, or
 4 another party holding a claim or encumbrance
 5 against or an interest in a fee time share
 6 interest or interest in other deregistered land;

7 (2) A lis pendens or notice of pendency of action, notice,
 8 affidavit, demand, certificate, execution, copy of
 9 execution, officer's return, or other instrument
 10 relating to a fee time share interest or interest in
 11 other deregistered land and otherwise required or
 12 permitted to be recorded or registered in connection
 13 with the enforcement or foreclosure of any lien,
 14 whether by way of power of sale pursuant to [~~a power~~
 15 ~~of sale under section 667-5,~~] chapter 667 or
 16 otherwise; and

17 (3) Any declaration annexing property to, any declaration
 18 deannexing property from, any amendment or supplement
 19 to, correction of, or release or termination of, any
 20 of the following documents, instruments, or papers
 21 that have been registered pursuant to this chapter and
 22 that pertain to deregistered land:



- 1 (A) A declaration of covenants, conditions,
2 restrictions, or similar instrument, by whatever
3 name denominated, establishing or governing a
4 time share plan, or the bylaws of a time share
5 owners association, notice of time share plan, or
6 other time share instrument;
- 7 (B) A declaration of condominium property regime or
8 similar declaration by whatever name denominated,
9 the bylaws of the association of apartment
10 owners, the condominium map, any declaration of
11 merger and any instrument effecting a merger;
12 provided that if only some of the condominium
13 apartments are included in the time share plan,
14 then it shall be necessary to register, and to
15 note on the certificate of title for any
16 apartment not included in the time share plan:
- 17 (i) Any declaration annexing property to the
18 condominium property regime;
- 19 (ii) Any declaration deannexing property from the
20 condominium property regime;



- 1 (iii) Any instrument effecting a merger of two or
2 more condominium projects or two or more
3 phases of a condominium project; and
- 4 (iv) Any document, instrument, or paper amending,
5 supplementing, correcting, releasing, or
6 terminating any of the documents listed in
7 subparagraph (B)(i) through (iii), the
8 declaration of condominium property regime,
9 the bylaws of the association of apartment
10 owners, the condominium map, or any
11 declaration of merger; and
- 12 (C) A declaration of covenants, conditions,
13 restrictions, or similar instrument, by whatever
14 name denominated, the bylaws of any homeowners
15 association, any declaration of annexation or
16 deannexation, any amendments and supplements
17 thereto, and any cancellation or extinguishment
18 thereof, any declaration of merger and any
19 instrument effecting a merger; provided that if
20 only some of the parcels of land covered by the
21 declaration constitutes deregistered land, and if
22 one or more of the remaining parcels constitute



1 registered land, then it shall be necessary to
2 register, and to note on the certificate of title
3 for any registered land:

4 (i) Any declaration annexing property to the
5 declaration;

6 (ii) Any declaration deannexing property from the
7 operation of the declaration; and

8 (iii) Any document, instrument, or paper amending,
9 supplementing, correcting, releasing, or
10 terminating any of the documents listed in
11 subparagraph (C) (i) or (ii), the declaration
12 of covenants, conditions, restrictions, or
13 the bylaws of the homeowners association."

14 SECTION 8. Section 514A-90, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsections (a) and (b) to read:

17 "(a) All sums assessed by the association of apartment
18 owners but unpaid for the share of the common expenses chargeable
19 to any apartment constitute a lien on the apartment prior to all
20 other liens, except:

21 (1) Liens for taxes and assessments lawfully imposed by
22 governmental authority against the apartment; and



1 (2) All sums unpaid on any mortgage of record that was
2 recorded prior to the recordation of notice of a lien
3 by the association of apartment owners, and costs and
4 expenses including attorneys' fees provided in such
5 mortgages[-];

6 provided that a lien recorded by the association of apartment
7 owners shall expire two years from the date of recordation
8 unless renewed by the association of apartment owners prior to
9 the expiration of the lien.

10 The lien of the association of apartment owners may be
11 foreclosed by action or by nonjudicial or power of sale
12 foreclosure procedures set forth in chapter 667, by the managing
13 agent or board of directors, acting on behalf of the association
14 of apartment owners [~~in like manner as a mortgage of real~~
15 ~~property~~]; provided that no association of apartment owners may
16 foreclose a lien against any apartment that arises solely from
17 finances, penalties, legal fees, or late fees. In any such
18 foreclosure, the apartment owner shall be required to pay a
19 reasonable rental for the apartment, if so provided in the
20 bylaws[-] or the law, and the plaintiff in the foreclosure shall
21 be entitled to the appointment of a receiver to collect the rental
22 owed[-] by the apartment owner or any tenant of the apartment. If



1 the association of apartment owners is the plaintiff, it may
2 request that its managing agent be appointed as receiver to
3 collect the rent from the tenant. The managing agent or board of
4 directors, acting on behalf of the association of apartment
5 owners, unless prohibited by the declaration, may bid on the
6 apartment at foreclosure sale, and acquire and hold, lease,
7 mortgage, and convey the apartment. Action to recover a money
8 judgment for unpaid common expenses shall be maintainable without
9 foreclosing or waiving the lien securing the unpaid common
10 expenses owed.

11 (b) Except as provided in subsection (g), when the mortgagee
12 of a mortgage of record or other purchaser of an apartment obtains
13 title to the apartment as a result of foreclosure of the mortgage,
14 the acquirer of title and the acquirer's successors and assigns
15 shall not be liable for the share of the common expenses or
16 assessments by the association of apartment owners chargeable to
17 the apartment [~~which~~] that became due prior to the acquisition of
18 title to the apartment by the acquirer. The unpaid share of
19 common expenses or assessments shall be deemed to be common
20 expenses collectible from all of the apartment owners, including
21 the acquirer and the acquirer's successors and assigns. The
22 mortgagee of record or other purchaser of the apartment shall be



1 deemed to acquire title and shall be required to pay the
2 apartment's share of common expenses and assessments beginning:

3 (1) Thirty-six days after the order confirming the sale to
4 the purchaser has been filed with the court;

5 (2) Sixty days after the hearing at which the court grants
6 the motion to confirm the sale to the purchaser;

7 (3) Thirty days after the public sale in a nonjudicial
8 power of sale foreclosure conducted pursuant to
9 ~~[section 667-57]~~ chapter 667; or

10 (4) Upon the recording of the instrument of conveyance,
11 whichever occurs first; provided that the mortgagee of record or
12 other purchaser of the apartment shall not be deemed to acquire
13 title under paragraph (1), (2), or (3), if transfer of title is
14 delayed past the thirty-six days specified in paragraph (1), the
15 sixty days specified in paragraph (2), or the thirty days
16 specified in paragraph (3), when a person who appears at the
17 hearing on the motion or a party to the foreclosure action
18 requests reconsideration of the motion or order to confirm sale,
19 objects to the form of the proposed order to confirm sale,
20 appeals the decision of the court to grant the motion to confirm
21 sale, or the debtor or mortgagor declares bankruptcy or is
22 involuntarily placed into bankruptcy. In any such case, the



1 mortgagee of record or other purchaser of the apartment shall be
2 deemed to acquire title upon recordation of the instrument of
3 conveyance."

4 2. By amending subsections (h) and (i) to read:

5 "(h) The amount of the special assessment assessed under
6 subsection (g) shall not exceed the total amount of unpaid
7 regular monthly common assessments that were assessed during the
8 twelve months immediately preceding the completion of the
9 judicial or nonjudicial power of sale foreclosure. [~~In no event~~
10 ~~shall the amount of the special assessment exceed the sum of~~
11 ~~\$7,200.~~]

12 (i) For purposes of subsections (g) and (h), the following
13 definitions shall apply:

14 "Completion" means:

15 (1) In a nonjudicial power of sale foreclosure, when
16 the affidavit [~~required under section 667-5 is~~
17 ~~filed,~~] after public sale is recorded pursuant to
18 section 667-33; and

19 (2) In a judicial foreclosure, when a purchaser is
20 deemed to acquire title pursuant to subsection
21 (b).

22 "Regular monthly common assessments" shall not include:



- 1 (1) Any other special assessment, except for a
- 2 special assessment imposed on all apartments as
- 3 part of a budget adopted pursuant to section
- 4 514A-83.6;
- 5 (2) Late charges, fines, or penalties;
- 6 (3) Interest assessed by the association of apartment
- 7 owners;
- 8 (4) Any lien arising out of the assessment; or
- 9 (5) Any fees or costs related to the collection or
- 10 enforcement of the assessment, including
- 11 attorneys' fees and court costs."

12 SECTION 9. Section 514B-146, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending subsections (a) and (b) to read:

15 "(a) All sums assessed by the association but unpaid for
16 the share of the common expenses chargeable to any unit shall
17 constitute a lien on the unit with priority over all other
18 liens, except:

- 19 (1) Liens for taxes and assessments lawfully imposed by
- 20 governmental authority against the unit; and
- 21 (2) All sums unpaid on any mortgage of record that was
- 22 recorded prior to the recordation of a notice of a



1 lien by the association, and costs and expenses
2 including attorneys' fees provided in such
3 mortgages[-];
4 provided that a lien recorded by the association shall expire
5 two years from the date of recordation unless renewed by the
6 association prior to the expiration of the lien.

7 The lien of the association may be foreclosed by action or
8 by nonjudicial or power of sale foreclosure procedures set forth
9 in chapter 667, by the managing agent or board, acting on behalf
10 of the association[~~, in like manner as a mortgage of real~~
11 ~~property.~~]; provided that no association may foreclose a lien
12 against any unit that arises solely from fines, penalties, legal
13 fees, or late fees. In any such foreclosure, the unit owner
14 shall be required to pay a reasonable rental for the unit, if so
15 provided in the bylaws[-] or the law, and the plaintiff in the
16 foreclosure shall be entitled to the appointment of a receiver
17 to collect the rental owed[-] by the unit owner or any tenant of
18 the unit. If the association is the plaintiff, it may request
19 that its managing agent be appointed as receiver to collect the
20 rent from the tenant. The managing agent or board, acting on
21 behalf of the association, unless prohibited by the declaration,
22 may bid on the unit at foreclosure sale, and acquire and hold,



1 lease, mortgage, and convey the unit. Action to recover a money
2 judgment for unpaid common expenses shall be maintainable
3 without foreclosing or waiving the lien securing the unpaid
4 common expenses owed.

5 (b) Except as provided in subsection (g), when the
6 mortgagee of a mortgage of record or other purchaser of a unit
7 obtains title to the unit as a result of foreclosure of the
8 mortgage, the acquirer of title and the acquirer's successors
9 and assigns shall not be liable for the share of the common
10 expenses or assessments by the association chargeable to the
11 unit [~~which~~] that became due prior to the acquisition of title
12 to the unit by the acquirer. The unpaid share of common
13 expenses or assessments shall be deemed to be common expenses
14 collectible from all of the unit owners, including the acquirer
15 and the acquirer's successors and assigns. The mortgagee of
16 record or other purchaser of the unit shall be deemed to acquire
17 title and shall be required to pay the unit's share of common
18 expenses and assessments beginning:

19 (1) Thirty-six days after the order confirming the sale to
20 the purchaser has been filed with the court;

21 (2) Sixty days after the hearing at which the court grants
22 the motion to confirm the sale to the purchaser;



1 (3) Thirty days after the public sale in a nonjudicial
2 power of sale foreclosure conducted pursuant to
3 ~~[section 667-5,]~~ chapter 667; or

4 (4) Upon the recording of the instrument of conveyance;
5 whichever occurs first; provided that the mortgagee of record or
6 other purchaser of the unit shall not be deemed to acquire title
7 under paragraph (1), (2), or (3), if transfer of title is
8 delayed past the thirty-six days specified in paragraph (1), the
9 sixty days specified in paragraph (2), or the thirty days
10 specified in paragraph (3), when a person who appears at the
11 hearing on the motion or a party to the foreclosure action
12 requests reconsideration of the motion or order to confirm sale,
13 objects to the form of the proposed order to confirm sale,
14 appeals the decision of the court to grant the motion to confirm
15 sale, or the debtor or mortgagor declares bankruptcy or is
16 involuntarily placed into bankruptcy. In any such case, the
17 mortgagee of record or other purchaser of the unit shall be
18 deemed to acquire title upon recordation of the instrument of
19 conveyance."

20 2. By amending subsections (h) and (i) to read:

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



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

6 (i) For purposes of subsections (g) and (h), the following
 7 definitions shall apply, unless the context requires otherwise:

8 "Completion" means:

9 (1) In a nonjudicial power of sale foreclosure, when the
 10 affidavit [~~required under section 667-5 is filed;~~]
 11 after public sale is recorded pursuant to section 667-
 12 33; and

13 (2) In a judicial foreclosure, when a purchaser is deemed
 14 to acquire title pursuant to subsection (b).

15 "Regular monthly common assessments" does not include:

16 (1) Any other special assessment, except for a special
 17 assessment imposed on all units as part of a budget
 18 adopted pursuant to section 514B-148;

19 (2) Late charges, fines, or penalties;

20 (3) Interest assessed by the association;

21 (4) Any lien arising out of the assessment; or



1 (5) Any fees or costs related to the collection or
2 enforcement of the assessment, including attorneys'
3 fees and court costs."

4 SECTION 10. Section 607-5, Hawaii Revised Statutes, is
5 amended by amending subsections (a) and (b) to read as follows:

6 "(a) The fees prescribed by the schedule in this section
7 shall be paid to the clerk of the circuit court as costs of
8 court by the person instituting the action or proceeding; or
9 offering the paper for filing, or causing the document to be
10 issued or the services to be performed in the circuit court;
11 provided that nothing in the schedule shall apply to cases of
12 adults charged with commission of a crime, or to proceedings
13 under section 571-11(1), (2), or (9), to proceedings under
14 chapter 333F or 334, to small estates including decedents'
15 estates and protection of property of minors and persons under
16 disability when the amount payable is fixed by another statute [~~-~~
17 ~~or to nonjudicial foreclosures converted to judicial proceedings~~
18 ~~pursuant to section 667-53, and~~]; provided further that the fees
19 prescribed by subsection (c)(32) shall be deposited by the clerk
20 of the circuit court into the judiciary computer system special
21 fund pursuant to section 601-3.7 [~~-~~]; and provided further that
22 the fees prescribed by subsection (b)(1a) shall be deposited by



1 the clerk of the circuit court as provided in section 667-
2 53(a)(6).

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

5 **SCHEDULE**

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

12 (b) **PART I**

13 Action or proceeding, general:

14 (1) Civil action or special proceeding, unless
15 another item in part I applies \$200

16 (1a) Petition for conversion of nonjudicial
17 foreclosure to judicial foreclosure \$250

18 (2) Appeal to a circuit court \$100

19 (3) Transfer of action to circuit court from district
20 court, in addition to district court fees \$125

21 Trusts:



- 1 (4) Proceeding for (A) appointment of trustee; (B)
- 2 appointment of successor; (C) resignation of
- 3 trustee; (D) instructions; (E) approval of
- 4 investment; (F) approval of sale, mortgage,
- 5 lease, or other disposition of property; (G)
- 6 approval of compromise of claim, for each such
- 7 matter \$100
- 8 (5) Proceeding for (A) removal of trustee; (B) order
- 9 requiring accounting; (C) invalidation of action
- 10 taken by trustee; (D) termination of trust, for
- 11 each such matter \$100
- 12 (6) Accounting, this fee to be paid for each account
- 13 filed and to include the settlement of the
- 14 account \$10
- 15 (7) Vesting orderno charge under part I
- 16 (8) Allowance of fees of trustees, attorneys, or
- 17 other fees for services incurred in a
- 18 proceeding for which a fee has been paid
- 19 under this sectionno charge under part I
- 20 (8a) Registration of a trust, or release of
- 21 registration, under chapter 560 \$3
- 22 (9) Any other proceeding relating to a trust \$15



- 1 Conservatorship:
- 2 (10) Proceeding for (A) appointment; (B) appointment
- 3 of successor; (C) resignation; (D) instructions,
- 4 unless included in one of the foregoing
- 5 proceedings; (E), (F), (G) approval of any matter
- 6 listed in (E), (F), or (G) of item (4) in
- 7 relation to a trust, for each such matter \$100
- 8 (11) Proceeding of the nature listed in (A), (B), (C),
- 9 or (D) of item (5) in relation to a trust, for
- 10 each such matter \$15
- 11 (12) Accounting, same as provided by item (6) in
- 12 relation to a trust \$10
- 13 (13) Any other proceeding relating to a
- 14 conservatorship no charge under part I
- 15 Guardianship:
- 16 (13a) Guardianship, including all matters of the nature
- 17 listed in items (4) to (9), whether in family or
- 18 circuit court \$100
- 19 Probate (decedents' estates). These fees include all matters of
- 20 the nature listed in items (4) to (9), without additional
- 21 charge:



1 (14) Probate, administration, domiciliary foreign
 2 personal representative, or ancillary
 3 administration, this fee to be paid once only for
 4 each decedent's estate \$100

5 Family court cases:

6 (15) Matrimonial action (annulment, divorce,
 7 separation, or separate maintenance) \$100

8 (16) Adoption \$100

9 (17) Guardianship, including all matters of the nature
 10 listed in items (4) to (9) ... As provided in item 13(a)

11 (18) Termination of parental rights .. no charge under part I

12 (19) Any other family court proceeding, except motions or
 13 other pleadings in matrimonial, adoption, and
 14 guardianship actions, but including without limitation
 15 custody proceedings even if in the form of an habeas
 16 corpus proceeding \$15"

17 SECTION 11. Chapter 667, Hawaii Revised Statutes, is
 18 amended as follows:

19 1. By designating part I as part IA and amending the title
 20 of that part to read:

21 "PART [~~I.~~] IA. FORECLOSURE BY ACTION [~~OR~~
 22 ~~FORECLOSURE BY POWER OF SALE]~~ "



1 2. By designating section 667-1 as section 667-1.5; and

2 3. By amending the title of part II to read:

3 " [+] PART II. [] — ALTERNATE] POWER OF
4 SALE FORECLOSURE PROCESS "

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

7 " §667-3 Proceeds, how applied. Mortgage and other
8 creditors shall be entitled to payment according to the priority
9 of their liens, and not pro rata; and judgments of foreclosure
10 [~~and foreclosures by power of sale~~] that are conducted in
11 compliance with this part [~~and for which an affidavit is~~
12 ~~recorded as required under section 667-5~~] shall operate to
13 extinguish the liens of subsequent mortgages and liens of the
14 same property, without forcing prior mortgagees or lienors to
15 their right of recovery. The surplus after payment of the
16 mortgage foreclosed, shall be applied pro tanto to the next
17 junior mortgage or lien, and so on to the payment, wholly or in
18 part, of mortgages and liens junior to the one assessed."

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

21 " [+] §667-5.5 [+] Foreclosure notice; planned communities;
22 condominiums; cooperative housing projects. Notwithstanding any



1 law or agreement to the contrary, any person who forecloses on a
2 property under this part within a planned community, a
3 condominium apartment or unit, or an apartment in a cooperative
4 housing project shall notify, by registered or certified mail,
5 the board of directors of the planned community association, the
6 association of owners of the condominium project, or the
7 cooperative housing project in which the property to be
8 foreclosed is located, of the following:

- 9 (1) The foreclosure at the time foreclosure proceedings
10 are begun[-]; and
- 11 (2) Any election by an owner-occupant of the property that
12 is the subject of the foreclosure to participate in
13 the mortgage foreclosure dispute resolution program
14 under part V.

15 The notice, at a minimum, shall identify the property,
16 condominium apartment or unit, or cooperative apartment that is
17 the subject of the foreclosure and identify the name or names of
18 the person or persons bringing foreclosure proceedings. [~~This~~
19 ~~section~~] Paragraph (1) shall not apply if the planned community
20 association, condominium association of owners, or cooperative
21 housing corporation is a party in a foreclosure action. This
22 section shall not affect civil proceedings against parties other



1 than the planned community association, association of owners,
2 or cooperative housing corporation."

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

5 "§667-10 Power unaffected by transfer; surplus after sale.
6 No sale or transfer by the mortgagor shall impair or annul any
7 right or power of attorney given in the mortgage to the
8 mortgagee to sell or transfer the mortgaged property, as
9 attorney or agent of the mortgagor, except as otherwise provided
10 by chapters 501 and 502. When public sale is made of the
11 mortgaged property under this part, distribution of the proceeds
12 of the sale shall be as specified in section 667-3, and the
13 remainder of the proceeds, if any, shall be paid over to the
14 owner of the mortgaged property, after deducting the amount of
15 ~~[claim]~~ all claims and all expenses attending the same."

16 SECTION 15. Section 667-21, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§667-21 ~~[Alternate power]~~ Power of sale process ~~[+~~
19 ~~definitions]~~. ~~[-(a)]~~ The power of sale process in this part is
20 an alternative ~~[power of sale process]~~ to the foreclosure by
21 action ~~[and the foreclosure by power of sale]~~ in part ~~[I-]~~ IA.

22 ~~[-(b)-As used in this part-~~



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

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

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

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

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



1 ~~lender as defined in section 207-11, or an institutional~~
2 ~~investor as defined in section 454-1.~~

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

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

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

19 ~~"Mortgage" means a mortgage, security agreement, or other~~
20 ~~document under which property is mortgaged, encumbered, pledged,~~
21 ~~or otherwise rendered subject to a lien for the purpose of~~



1 ~~securing the payment of money or the performance of an~~
2 ~~obligation.~~

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

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

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

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

14 ~~"Nonjudicial foreclosure" means foreclosure under power of~~
15 ~~sale.~~

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

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



1 ~~(1) Who owns an interest in the residential property, and~~
2 ~~the interest is encumbered by the mortgage being~~
3 ~~foreclosed, and~~

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

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

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

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

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

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

7 SECTION 16. Section 667-21.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 " ~~[+] §667-21.5 [+] Foreclosure notice; planned communities;~~
10 ~~condominiums; cooperative housing projects. Notwithstanding any~~
11 ~~law or agreement to the contrary, any person who forecloses on a~~
12 ~~property under this part within a planned community, a~~
13 ~~condominium apartment or unit, or an apartment in a cooperative~~
14 ~~housing project shall notify, by way of registered or certified~~
15 ~~mail, the board of directors of the planned community~~
16 ~~association, the association of owners of the condominium~~
17 ~~project, or the cooperative housing project in which the~~
18 ~~property to be foreclosed is located, of the following:~~

19 (1) The foreclosure at the time foreclosure proceedings
20 are begun[-]; and

21 (2) Any election by an owner-occupant of the property that
22 is the subject of the foreclosure to participate in



1 the mortgage foreclosure dispute resolution program
2 under part V.

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

13 SECTION 17. Section 667-22, Hawaii Revised Statutes, is
14 amended as follows:

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

16 "(a) When the mortgagor or the borrower has breached the
17 mortgage agreement, and when the foreclosing mortgagee intends
18 to conduct a power of sale foreclosure under this part, the
19 foreclosing mortgagee shall prepare a written notice of default
20 and intention to foreclose addressed to the mortgagor, the
21 borrower, and any guarantor. The notice of default and
22 intention to foreclose shall state:



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



1 (7) A statement that if the default is not cured by the
2 deadline date stated in the notice of default and
3 intention to foreclose, the entire unpaid balance of
4 the moneys owed to the mortgagee under the mortgage
5 agreement will become due, that the mortgagee intends
6 to conduct a power of sale foreclosure to sell the
7 mortgaged property at a public sale without any court
8 action and without going to court, and that the
9 mortgagee or any other person may acquire the
10 mortgaged property at the public sale;

11 (8) The name, address, electronic address, and telephone
12 number of the attorney who is representing the
13 foreclosing mortgagee; provided that the attorney
14 shall be licensed to practice law in the State and
15 physically located in the State; and

16 (9) Notice of the right of the owner-occupant to elect to
17 participate in any other process as established by
18 law."

19 2. By amending subsections (d) and (e) to read:

20 "(d) The notice of default and intention to foreclose
21 shall also include contact information for [leea] approved
22 housing counselors and approved budget and credit counselors.



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

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

7 (2) Any prior or junior creditors who have a recorded lien
8 on the mortgaged property before the recordation of
9 the notice of default and intention to foreclose under
10 section 667-23;

11 (3) The state director of taxation;

12 (4) The director of finance of the county where the
13 mortgaged property is located;

14 (5) The department of commerce and consumer affairs, by
15 filing the notice with the department when required;
16 and

17 (6) Any other person entitled to receive notice under this
18 part."

19 SECTION 18. Section 667-24, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§667-24 Cure of default. (a) If the default is cured as
22 required by the notice of default and intention to foreclose, or



1 if the parties have reached [~~a settlement document,~~] an
2 agreement to resolve the nonjudicial foreclosure, the
3 foreclosing mortgagee shall rescind the notice of default and
4 intention to foreclose. Within fourteen days of the date of the
5 cure or [~~a settlement document reached by the parties,~~] an
6 agreement to resolve the nonjudicial foreclosure, the
7 foreclosing mortgagee shall so notify any person who was served
8 with the notice of default and intention to foreclose. If the
9 notice of default and intention to foreclose was recorded, a
10 release of the notice of default and intention to foreclose
11 shall be recorded.

12 (b) If the default is not cured as required by the notice
13 of default and intention to foreclose, the parties have not
14 reached [~~a settlement document pursuant to part V]~~ an agreement
15 to resolve the nonjudicial foreclosure and no report of
16 noncompliance has been issued against the mortgagee under
17 section 667-82, and the mortgagor has not elected to convert the
18 foreclosure to a judicial action, the foreclosing mortgagee,
19 without filing a court action and without going to court, may
20 foreclose the mortgage under power of sale to sell the mortgaged
21 property at a public sale."



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

3 "(b) The public sale of the mortgaged property shall be
4 held only in the county where the mortgaged property is located;
5 provided that the public sale shall be held only on grounds or
6 at facilities under the administration of the State, as follows:

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

9 (2) At a state facility in Hilo, for a public sale of
10 mortgaged property located in the [~~eastern portion of~~
11 ~~the county of Hawaii,~~] districts of Hamakua, North
12 Hilo, South Hilo, or Puna;

13 (3) At a state facility in Kailua-Kona, for a public sale
14 of mortgaged property located in the [~~western portion~~
15 ~~of the county of Hawaii,~~] districts of North Kohala,
16 South Kohala, North Kona, South Kona, or Kau;

17 (4) At a state facility in the county seat of Maui, for a
18 public sale of mortgaged property located in the
19 county of Maui; and

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



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

6 SECTION 20. Section 667-27, Hawaii Revised Statutes, is
7 amended as follows:

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

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

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

12 (2) The dates and times of the two open houses of the
13 mortgaged property, or if there will not be any open
14 houses, the public notice shall so state;

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

17 (4) A description of the mortgaged property, including the
18 address and the tax map key number of the mortgaged
19 property;

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

21 (6) The name of the foreclosing mortgagee;

22 (7) The name of any prior or junior creditors having a



1 recorded lien on the mortgaged property before the
2 recordation of the notice of default and intention to
3 foreclose under section 667-23;

4 (8) The name, the address in the State, and the telephone
5 number in the State of the person in the State
6 conducting the public sale; and

7 (9) The terms and conditions of the public sale[~~;~~ and
8 ~~(10) An estimate of the opening bid] ."~~

9 2. By amending subsection (d) to read:

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



- 1 (1) Contains news of a general nature; and
- 2 (2) Is distributed within the county where the mortgaged
- 3 property is located:
- 4 (A) At least weekly;
- 5 (B) For a minimum of six months unless interrupted by
- 6 strike, natural disaster, or act of war or
- 7 terror; and
- 8 (C) To a minimum of one per cent of the residents of
- 9 the county, as determined by the last decennial
- 10 United States census and as verified by an
- 11 independent audit.

12 A person may apply to the circuit court for an order confirming
 13 a newspaper to be of general circulation for purposes of this
 14 subsection, which the court shall grant upon proof of compliance
 15 with this subsection. The public notice shall be published once
 16 each week for three consecutive weeks, constituting three
 17 publications. The public sale shall take place no sooner than
 18 fourteen days after the date of the publication of the third
 19 public notice advertisement."

20 SECTION 21. Section 667-28, Hawaii Revised Statutes, is
 21 amended by amending subsection (a) to read as follows:



1 "(a) The public sale may be either postponed or canceled
2 by the foreclosing mortgagee. Notice of the postponement or the
3 cancellation of the public sale shall be ~~[announced]~~;

4 (1) Announced by the foreclosing mortgagee at the date,
5 time, and place of the last scheduled public sale~~[-]~~;
6 and

7 (2) Provided to any other person who is entitled to
8 receive the notice of default under section 667-22."

9 SECTION 22. Section 667-32, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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~~
22 ~~mortgagee"~~] mortgagee as defined in [~~the power of sale~~



~~foreclosure law,~~ section 667-1, Hawaii Revised Statutes, conducting a power of sale foreclosure;

(3) The power of sale foreclosure is of a mortgage made by _____ (name of mortgagor) ("mortgagor"), dated _____, and recorded in the _____ (bureau of conveyances or office of the assistant registrar of the land court) as _____ (recordation information). The mortgaged property is located at: _____ (address or description of location) and is identified by tax map key number: _____. The legal description of the mortgaged property, including the certificate of title or transfer certificate of title number if registered in the land court, is attached as Exhibit "A". The name of the borrower, if different from the mortgagor, is _____ ("borrower");

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

(A) A notice of default and intention to foreclose



1 was served on the mortgagor, the borrower, and
2 the following person: _____. The
3 notice of default and intention to foreclose was
4 served on the following date and in the following
5 manner: _____;

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

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

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

22 (E) A public notice of the public sale was initially



1 published in the classified section of the
 2 _____, [~~a daily newspaper of~~
 3 ~~general circulation in the county where the~~
 4 ~~mortgaged property is located,~~] in accordance
 5 with section 667-27(d), Hawaii Revised Statutes,
 6 once each week for three consecutive weeks on the
 7 following dates: _____. A copy
 8 of the affidavit of publication for the last
 9 public notice of the public sale is attached as
 10 Exhibit "2". The date of the public sale was
 11 _____ (date). The last
 12 publication was not less than fourteen days
 13 before the date of the public sale;

14 (F) The public notice of the public sale was sent to
 15 the mortgagor, to the borrower, to the state
 16 director of taxation, to the director of finance
 17 of the county where the mortgaged property is
 18 located, and to the following:

19 _____ . The public notice was sent
 20 on the following dates and in the following
 21 manner: _____. Those dates were
 22 after the deadline date in the notice of default



1 and intention to foreclose, and those dates were
2 at least sixty days before the date of the public
3 sale;

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

10 (H) Two public showings (open houses) of the
11 mortgaged property were held (or were not held
12 because the mortgagor did not cooperate);

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

15 _____ (date), at
16 _____ (time), at the following
17 location: _____. The highest
18 successful bidder was _____ (name)
19 with the highest successful bid price of
20 \$_____; and

21 (J) At the time the public sale was held, the default
22 was not cured and there was no circuit court



1 foreclosure action pending in the circuit where
2 the mortgaged property is located; and

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

4 SECTION 23. Section 667-33, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The affidavit required under section 667-32 and the
7 conveyance document shall be recorded [~~at any time~~] no earlier
8 than ten days after the public sale is held but not later than
9 forty-five days after the public sale is held. The affidavit
10 and the conveyance document may be recorded separately and on
11 different days. After the recordation, the foreclosing
12 mortgagee shall mail or deliver a recorded copy to those persons
13 entitled to receive the public notice of the public sale under
14 section 667-27(c)."

15 SECTION 24. Section 667-37, Hawaii Revised Statutes, is
16 amended to read as follows:

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



1 circuit court of the circuit where the mortgaged property is
2 located[-]; provided that the action is filed before the public
3 sale is held. The power of sale foreclosure process shall be
4 stayed during the pendency of the circuit court foreclosure
5 action."

6 SECTION 25. Section 667-41, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§667-41 Public information notice requirement.

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



1 ~~event of the borrower's default, have the option of pursuing~~
2 ~~either a judicial or nonjudicial foreclosure as provided by law.~~
3 ~~These informational materials shall fully and completely explain~~
4 ~~these remedies in simple and understandable terms.] provide the~~
5 public information notice described in subsection (b) to the
6 public, upon request, and to any applicant submitting a loan
7 application where residential property is required to be used to
8 secure the loan. The notice shall be provided to all applicants
9 and all owners of the residential property (if different from
10 the applicants) within three business days after the submission
11 of a written loan application, or within three business days
12 after the time residential property is required to be used to
13 secure a loan, whether or not there is a written loan
14 application. The purpose of the public information notice is to
15 inform the public, applicants, and others that the financial
16 institutions, mortgagees, lenders, organizations, and other
17 business entities and persons who are authorized under this part
18 to enforce the foreclosure rights in a mortgage, in the event of
19 the borrower's default, have the option of pursuing either a
20 judicial or nonjudicial foreclosure in the manner provided by
21 law.



1 (b) The public information notice requirement shall be
2 satisfied by the delivery of a separate notice that contains the
3 following wording and is printed in not less than fourteen-point
4 font:

5 PUBLIC INFORMATION NOTICE PURSUANT TO
6 HAWAII REVISED STATUTES SECTION 667-41

7 WHAT IS FORECLOSURE?

8 This notice informs you regarding a lender's
9 right to foreclose in the event of a default on the
10 loan you have applied for or are considering if your
11 home is used to secure its repayment.

12 The mortgage agreement or contract that you may
13 enter into states that in the event the amounts due
14 under the loan are not paid when they are due, or for
15 other reasons you do not perform your promises in the
16 note and mortgage, all of which are known as defaults,
17 the lender shall have the option to foreclose the
18 mortgage, which will result in a sale of your home.

19 The entity or person who holds your mortgage
20 ("Mortgagee") may send you a notice informing you that
21 the Mortgagee is starting foreclosure proceedings.

22 You should not wait for that to happen; take steps to



1 prevent a foreclosure as soon as you are having
2 trouble paying your mortgage. You should contact your
3 lender or your lender's loan servicer, or you may
4 contact a budget and credit counselor or housing
5 counselor, to discuss your situation.

6 STEP ONE: NOTICE OF DEFAULT. The first step in
7 the foreclosure process is the Mortgagee usually sends
8 you a written notice of default, which occurs after
9 you are past due on your mortgage payment. The
10 Mortgagee will tell you in the notice how much time
11 you have to pay the required amount that is past due
12 and, by paying, will return your loan to good
13 standing.

14 STEP TWO: PROCEEDING TO FORECLOSURE. If you do
15 not pay the required amount past due by the deadline
16 in the notice of default, the Mortgagee may elect to
17 proceed to collect the balance due on your loan
18 through foreclosure. In Hawaii, there are two types
19 of foreclosures: judicial and nonjudicial.

20 In a JUDICIAL FORECLOSURE, the Mortgagee files a
21 lawsuit against you in order to obtain a court
22 judgment that you owe the balance due under your loan



1 and to obtain an order to sell the property. The
2 initial legal document you will receive in the lawsuit
3 is called the complaint. You should consult an
4 attorney of your choice who can advise you as to the
5 steps needed to protect your rights. Judicial
6 foreclosure involves the sale of the mortgaged
7 property under the supervision of the court. You will
8 receive notice of the foreclosure case hearings and
9 the sale date and the judicial decision is announced
10 after a hearing in court. The sale of the property
11 must be approved by the court before it can be
12 completed.

13 In a NONJUDICIAL FORECLOSURE, the process follows
14 the procedures spelled out in Chapter 667 of the
15 Hawaii Revised Statutes and in your mortgage. The
16 nonjudicial procedures allow a Mortgagee to foreclose
17 on and sell the property identified in the mortgage
18 without filing a lawsuit or court supervision. This
19 nonjudicial foreclosure is also called a power of sale
20 foreclosure. The Mortgagee starts the process by
21 giving you a written notice of default and of the
22 Mortgagee's intent to sell the property.



1 After the required time has elapsed, you will be
2 sent a notice of nonjudicial foreclosure sale, which
3 will tell you the date and location of the sale.

4 In a NONJUDICIAL foreclosure, if you own an
5 interest in the property you may have the right to
6 participate in the Mortgage Foreclosure Dispute
7 Resolution Program or to convert the nonjudicial
8 foreclosure into a judicial foreclosure. The
9 nonjudicial foreclosure may not proceed during the
10 dispute resolution process or after it has been
11 converted to a judicial foreclosure.

12 PLEASE NOTE: Even if a judicial or nonjudicial
13 foreclosure has commenced, you may be able to
14 reinstate the loan and keep your home if you pay the
15 delinquent amount then due and the foreclosure
16 expenses that your Mortgagee has incurred. You must
17 contact the Mortgagee as soon as possible to determine
18 whether reinstatement is possible.

19 STEP THREE: PUBLIC SALE. The sale of a
20 foreclosed home is usually made through a public
21 auction, where the highest bidder who can make a cash
22 deposit of up to 10% of the bid can buy the property.



1 In a judicial foreclosure, the court appoints a third
2 party commissioner to advertise and conduct the sale.
3 In a nonjudicial foreclosure, the Mortgagee advertises
4 and conducts the sale. In both types of sales, the
5 Mortgagee has the right to buy the property by
6 submitting a credit bid based upon the balance owed on
7 the mortgage, so long as its bid is higher than any
8 other bids. If the Mortgagee buys the property, the
9 Mortgagee has the right to re-sell it in a private
10 sale at a later date.

11 STEP FOUR: DISBURSEMENT OF PROCEEDS; POTENTIAL
12 DEFICIENCY JUDGMENT. After the foreclosure sale is
13 completed, the proceeds are paid out to lien holders,
14 including the Mortgagee, in the order set by law and
15 lastly to you if there are any proceeds left.

16 In a JUDICIAL FORECLOSURE, the court tells the
17 commissioner whom to pay and how much. If the
18 property did not sell for enough to pay off the
19 balance due under your loan, the Mortgagee has the
20 right to ask the court for a deficiency judgment
21 against you for the difference.



1 In a NONJUDICIAL FORECLOSURE, the Mortgagee
 2 distributes the proceeds from the sale. If the
 3 mortgaged property does not sell for enough to pay off
 4 the balance due under your loan, the Mortgagee may
 5 have the right to file a lawsuit against you to
 6 collect the deficiency. In many cases, after a
 7 nonjudicial foreclosure, a Mortgagee cannot or will
 8 not choose to file a lawsuit for a deficiency.

9 READ THE NOTE AND MORTGAGE CAREFULLY TO
 10 UNDERSTAND WHAT IS REQUIRED AND HOW TO AVOID
 11 FORECLOSURE, AND CONSULT WITH AN ATTORNEY REGARDING
 12 YOUR LEGAL RIGHTS.

13 (c) The requirements of this section shall apply only to
 14 written loan applications' submitted, or to loans where
 15 residential property is required to be used as security, after
 16 August 31, 2012."

17 SECTION 26. Section 667-53, Hawaii Revised Statutes, is
 18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) An owner-occupant of a residential property that is
 20 subject to nonjudicial foreclosure under part [~~I-04~~] II may
 21 convert the action to a judicial foreclosure provided that:

22 (1) A petition conforming to section 667-54 shall be filed



1 with the circuit court in the circuit where the
2 residential property is located, stating that the
3 owner-occupant of the property elects to convert the
4 nonjudicial foreclosure to a judicial foreclosure
5 proceeding no later than thirty days after the
6 foreclosure notice is served on the owner-occupant as
7 required by section [~~667-5-07~~] 667-22;

- 8 (2) Within forty-five days of the filing of the petition,
9 all owner-occupants and mortgagors of an interest in
10 the residential property whose interests are pledged
11 or otherwise encumbered by the mortgage that is being
12 foreclosed and all persons who have signed the
13 promissory note or other instrument evidencing the
14 debt secured by the mortgage that is being foreclosed,
15 including without limitation co-obligors and
16 guarantors, shall file a statement in the circuit
17 court action that they agree to submit themselves to
18 the judicial process and the jurisdiction of the
19 circuit court; provided further that if this condition
20 is not satisfied, the circuit court action may be
21 dismissed with prejudice as to the right of any owner-
22 occupant to convert the action to a judicial



- 1 proceeding, and the mortgagee may proceed
2 nonjudicially;
- 3 (3) Filing a petition pursuant to paragraph (1) shall
4 automatically stay the nonjudicial foreclosure action
5 unless and until the judicial proceeding has been
6 dismissed;
- 7 (4) The person filing the petition pursuant to paragraph
8 (1) shall have an affirmative duty to promptly notify
9 the Hawaii attorney who is handling the nonjudicial
10 foreclosure about the filing of the complaint for
11 conversion;
- 12 (5) All parties joined in the converted judicial
13 proceeding may assert therein any claims and defenses
14 that they could have asserted had the action
15 originally been commenced as a judicial foreclosure
16 action; and
- 17 (6) ~~[Notwithstanding chapter 607, the]~~ The fee for filing
18 the petition shall be ~~[not more than \$525, of which]~~
19 \$250, which shall be deposited into the mortgage
20 foreclosure dispute resolution special fund
21 established under section 667-86 ~~[, provided that if~~
22 ~~the mortgage foreclosure dispute resolution program~~



1 ~~under part V has not yet been implemented, the filing~~
2 ~~fee shall be not more than \$300].~~

3 (b) This section shall not apply to foreclosures of
4 association liens that arise under a declaration filed pursuant
5 to chapter 421J, 514A, or 514B."

6 SECTION 27. Section 667-54, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 " [f] (a) [t] A petition filed pursuant to section 667-53
9 shall contain at a minimum:

10 (1) A caption setting forth the name of the court, the
11 title of the action, and the file number; provided
12 that the title of the action shall include the names
13 of the filing party as petitioner and the foreclosing
14 party as the respondent;

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

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

22 (4) A statement identifying all other owner-occupants and



1 mortgagors of the property whose interests are pledged
2 or otherwise encumbered by the mortgage that is being
3 foreclosed and all persons who have signed the
4 promissory note or other instrument evidencing the
5 debt secured by the mortgage that is being foreclosed,
6 including without limitation co-obligors and
7 guarantors;

8 (5) A certification under penalty of perjury that the
9 filing party is an owner-occupant of the subject
10 property and seeks to convert the nonjudicial
11 foreclosure to a judicial proceeding;

12 (6) A statement certifying that the filing party served a
13 copy of the petition on the attorney identified in the
14 foreclosure notice under section [~~667-5-0x~~] 667-22
15 either by personal delivery at, or by postage prepaid
16 United States mail to, the address of the attorney as
17 set forth in the foreclosure notice under section
18 [~~667-5-0x~~] 667-22; and

19 (7) A copy of the foreclosure notice that was served on
20 the filing party pursuant to section [~~667-5-0x~~] 667-22
21 and for which the filing party is seeking to convert
22 to a judicial proceeding."



1 SECTION 28. Section 667-55, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§667-55[+] Notice of default and intention to
4 foreclose; residential property; required statement on
5 conversion. (a) The foreclosure notice that is served as
6 required under section [~~667-5-02~~] 667-22 shall include, in
7 addition to the contents required under section [~~667-5-02~~] 667-
8 22, a statement printed in not less than fourteen-point font as
9 follows:

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



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

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

21 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE
22 HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE



1 FILING OF THE CONVERSION FORM.

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

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

20 (b) The statement required by this section shall not be
21 required to be included in [~~the notice of sale published~~
22 ~~pursuant to 667-5(a)(1) or~~] the public notice of public sale



1 published pursuant to section 667-27."

2 SECTION 29. Section 667-56, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[+]§667-56[+] Prohibited conduct. It shall be a
5 prohibited practice for any foreclosing mortgagee to engage in
6 any of the following practices:

- 7 (1) Holding a public sale on a date, at a time, or at a
8 place other than that described in the public notice
9 of the public sale or a properly noticed postponement;
- 10 (2) Specifying a fictitious place in the public notice of
11 the public sale;
- 12 (3) Conducting a postponed public sale on a date other
13 than the date described in the new public notice of
14 the public sale;
- 15 (4) Delaying the delivery of the recorded, conformed copy
16 of the conveyance document to a bona fide purchaser
17 who purchases in good faith for more than [~~forty-five~~]
18 sixty days after the completion of the public sale;
- 19 (5) Completing nonjudicial foreclosure proceedings during
20 short sale escrows with a bona fide purchaser if the
21 short sale offer is at least [~~five~~] ten per cent
22 greater than the public sale price; provided that



1 escrow is opened within ten days and closed within
2 forty-five days of the public sale; and provided
3 further that a bona fide short sale purchaser shall
4 have priority over any other purchaser;

5 (6) Completing nonjudicial foreclosure proceedings during
6 bona fide loan modification negotiations with the
7 mortgagor; or

8 (7) Completing nonjudicial foreclosure proceedings against
9 a mortgagor who has been accepted or is being
10 evaluated for consideration for entry into a federal
11 loan modification program before obtaining a
12 certificate or other documentation confirming that the
13 mortgagor is no longer eligible for, or an active
14 participant of, that federal program."

15 SECTION 30. Section 667-57, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~§~~667-57] Suspension of foreclosure actions by junior
18 lienholders. (a) Upon initiation of a foreclosure action
19 pursuant to part [~~II~~] IA or part II by a foreclosing mortgagee
20 [~~as defined in section 667-21(b)~~], no junior lienholder shall be
21 permitted to initiate or continue a nonjudicial foreclosure
22 pursuant to part [~~II~~] II until the foreclosure initiated by the



1 foreclosing mortgagee has been concluded by a judgment issued by
2 a court pursuant to section [~~667-17~~] 667-1.5, the recording of
3 an affidavit after public sale pursuant to section [~~667-5-er~~]
4 667-33, or the filing of [~~a settlement document~~] an agreement
5 under the mortgage foreclosure dispute resolution provisions of
6 section 667-81.

7 (b) Upon initiation of a foreclosure action pursuant to
8 part [H] IA or part II by a foreclosing mortgagee [~~as defined in~~
9 ~~section 667-21(b)~~], no junior lienholder shall be permitted to
10 initiate a nonjudicial foreclosure pursuant to part II during
11 the pendency of a stay pursuant to section 667-83; provided that
12 a junior lienholder may initiate or continue with a nonjudicial
13 foreclosure pursuant to part II if [~~the~~]:

- 14 (1) The junior lien foreclosure was initiated before the
15 foreclosure action by the foreclosing mortgagee[-]; or
16 (2) The junior lienholder is an association and has not
17 been provided notice of the foreclosure action,
18 pursuant to section 667-21.5, or has not received
19 written notification of a case opening pursuant to
20 section 667-79."

21 SECTION 31. Section 667-58, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " [†] §667-58 [†] Valid notice[-]; affiliate statement. (a)

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

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

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



1 (d) No attorney of a mortgage servicer, foreclosing
2 mortgagee, or lender shall be required to be included in any
3 affiliate statement of a foreclosing mortgagee or lender. No
4 notice or other correspondence made by any attorney for the
5 foreclosing mortgagee or lender shall be required to reference
6 any affiliate statement made by the foreclosing mortgagee or
7 lender. Any notice or other correspondence made by any attorney
8 for a mortgage servicer shall reference, in accordance with
9 subsection (b), the appropriate affiliate statement of the
10 foreclosing mortgagee or lender authorizing the mortgage
11 servicer to act."

12 SECTION 32. Section 667-59, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+] §667-59 [+] Actions and communications with the
15 mortgagor in connection with a foreclosure. A foreclosing
16 mortgagee shall be bound by all agreements, obligations,
17 representations, or inducements made on its behalf by its
18 agents, including but not limited to its employees,
19 representatives, mortgage servicers, or persons authorized by a
20 foreclosing mortgagee or lender pursuant to an affiliate
21 statement recorded in the bureau of conveyances pursuant to
22 section 667-58.



1 ~~[For purposes of this section, "foreclosing mortgagee" has~~
2 ~~the same meaning as in section 667-21.] "~~

3 SECTION 33. Section 667-63, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A mortgage creditor having a mortgage lien on a time
6 share interest who desires notice that another mortgage creditor
7 having a mortgage lien on the time share interest intends to
8 foreclose and sell the mortgaged time share interest, pursuant
9 to the power of sale under section 667-62, may submit a written
10 request to the mortgagee who is foreclosing or who may foreclose
11 the mortgage by power of sale, asking to receive notice of the
12 mortgagee's intention to foreclose the mortgage under section
13 667-62. The request for notice:

14 (1) May be submitted any time after the recordation [~~er~~
15 ~~filing]~~ of the subject mortgage [~~at the bureau of~~
16 ~~conveyances or the land court, but shall be~~]; provided
17 that the request is submitted prior to completion of
18 publication of notice of the intention to foreclose
19 the mortgage and of the sale of the mortgaged time
20 share interest;

21 (2) Shall be signed by the mortgage creditor desiring to
22 receive notice, or its authorized representative; and



1 (3) Shall specify the name and address of the person to
2 whom the notice is to be mailed."

3 SECTION 34. Section 667-71, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

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

9 (b) This part shall not apply to actions by an association
10 to foreclose on a lien for amounts owed to the association that
11 arise under a declaration filed pursuant to chapter 421J, 514A,
12 or 514B, or to a mortgagor who has previously participated in
13 dispute resolution under this part for the same property on the
14 same mortgage loan."

15 SECTION 35. Section 667-73, Hawaii Revised Statutes, is
16 amended as follows by amending subsection (c) to read as
17 follows:

18 "(c) The department is authorized to contract with county,
19 state, or federal agencies, and with private organizations or
20 approved housing counselors or approved budget and credit
21 counselors for the performance of any of the functions of this



1 part. These contracts shall not be subject to chapter 103D or
2 103F."

3 SECTION 36. Section 667-74, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~667-74~~§~~] Availability of dispute resolution required
6 before foreclosure. Before a public sale may be conducted
7 pursuant to section [~~667-5-05~~] 667-25 for a residential property
8 that is occupied by an owner-occupant [~~as a primary residence~~],
9 the foreclosing mortgagee [~~shall~~], at the election of the owner-
10 occupant, shall participate in the mortgage foreclosure dispute
11 resolution program under this part to attempt to negotiate an
12 agreement that avoids foreclosure or mitigates damages in cases
13 where foreclosure is unavoidable."

14 SECTION 37. Section 667-75, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~§~~667-75~~§~~] Notice of dispute resolution availability
17 required. (a) A foreclosure notice served pursuant to section
18 [~~667-5-05~~] 667-22(e) shall include notice that the mortgagee is
19 required, at the election of an owner-occupant, to participate
20 in the mortgage foreclosure dispute resolution program pursuant
21 to this part to attempt to avoid foreclosure or to mitigate
22 damages where foreclosure is unavoidable.



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

3 (1) The name and contact information of the mortgagor and
4 the mortgagee;

5 (2) The subject property address and legal description,
6 including tax map key number and the certificate of
7 title or transfer certificate of title number if
8 [~~within the land court's jurisdiction;~~] registered in
9 the land court;

10 (3) The name and contact information of a person or entity
11 authorized to negotiate a loan modification on behalf
12 of the mortgagee;

13 (4) A statement that the mortgagor shall consult with an
14 approved housing counselor or an approved budget and
15 credit counselor at least thirty days prior to the
16 first day of a scheduled dispute resolution session;

17 (5) Contact information for all [~~see~~] approved housing
18 counselors;

19 (6) Contact information for all [~~see~~] approved budget
20 and credit counselors;

21 (7) A statement that the mortgagor electing to participate
22 in the mortgage foreclosure dispute resolution program



1 shall provide a certification under penalty of perjury
2 to the department that the mortgagor is an owner-
3 occupant of the subject property, including supporting
4 documentation;

5 (8) A general description of the information that an
6 owner-occupant electing to participate in the mortgage
7 foreclosure dispute resolution program is required to
8 provide to participate in the program as described
9 under section 667-80(c)(2);

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

15 SECTION 38. Section 667-76, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Within three days after a mortgagee serves a
18 foreclosure notice on an owner-occupant pursuant to section
19 [~~667-5-er~~] 667-22, the mortgagee shall file the foreclosure
20 notice with the department and pay a filing fee of \$250, which
21 shall be deposited into the mortgage foreclosure dispute
22 resolution special fund established under section 667-86."



1 SECTION 39. Section 667-77, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [H] §667-77 [H] Notification to mortgagor by department.

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

12 (1) Information about the mortgage foreclosure dispute
13 resolution program;

14 (2) A form for an owner-occupant to elect or to waive
15 participation in the mortgage foreclosure dispute
16 resolution program pursuant to this part that shall
17 contain instructions for the completion and return of
18 the form to the department and the department's
19 mailing address;

20 (3) A statement that the mortgagor electing to participate
21 in the mortgage foreclosure dispute resolution program
22 shall provide a certification under penalty of perjury



1 to the department that the mortgagor is an owner-
2 occupant of the subject property, including a
3 description of acceptable supporting documentation as
4 required by section 667-78(a)(2);

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

12 (5) A description of the information required under
13 section 667-80(c)(2) that the owner-occupant shall
14 provide to the mortgagee and the neutral assigned to
15 the dispute resolution;

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

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

22 (8) Contact information for all ~~local~~ approved budget



1 and credit counselors; and
2 (9) Contact information for the department.
3 The notification shall be mailed to the subject property address
4 and any other addresses for the mortgagor as provided in the
5 mortgagee's notice of dispute resolution under [{}section{}] 667
6 75 and the foreclosure notice under section [~~667-5-0x~~] 667-
7 22(a)."

8 SECTION 40. Section 667-78, Hawaii Revised Statutes, is
9 amended as follows:

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

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

14 (1) The completed program election form provided
15 [pursuant]:

16 (A) Pursuant to section 667-77(2); or

17 (B) On a website maintained by the department;

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



1 identification forms; and

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

3 The completed form and fees shall be received by the department
4 no later than thirty days after mailing of the department's
5 notification pursuant to section 667-77."

6 2. By amending subsection (c) to read:

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

16 SECTION 41. Section 667-79, Hawaii Revised Statutes, is
17 amended as follows:

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

19 "(a) If an owner-occupant elects to participate in the
20 mortgage foreclosure dispute resolution program, the department
21 shall open a dispute resolution case. Within twenty days of
22 receipt of the owner-occupant's election form and fee in



1 accordance with section 667-78, the department shall mail
2 written notification of the case opening to the parties and, if
3 applicable, the condominium or other homeowner association of
4 the project where the owner-occupant's property is located, by
5 registered mail, return receipt requested, which shall include:

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

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

16 2. By amending subsection (c) to read:

17 "(c) The written notification of a case opening under this
18 section shall operate as a stay of the foreclosure proceeding in
19 accordance with section 667-83[7] and may be [~~filed or~~
20 recorded[, ~~as appropriate, at the land court or bureau of~~
21 conveyances]."



1 SECTION 42. Section 667-80, Hawaii Revised Statutes, is
2 amended as follows:

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

4 "(a) The parties to a dispute resolution process conducted
5 under this part shall consist of the owner-occupant or the
6 owner-occupant's representative, and the mortgagee or the
7 mortgagee's representative; provided that:

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

16 (2) The mortgagee and owner-occupant may be represented by
17 [~~counsel,~~] an attorney; and

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

21 2. By amending subsection (c) to read:

22 "(c) The parties shall comply with all information



1 requests from the department or neutral. No less than fifteen
2 days prior to the first day of the scheduled dispute resolution
3 session:

4 (1) The mortgagee shall provide to the department and the
5 mortgagor:

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

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

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

18 (2) The owner-occupant shall provide to the department and
19 the mortgagee:

20 (A) Documentation showing income qualification for a
21 loan modification, including any copies of pay
22 stubs, W-2 forms, social security or disability



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



1 SECTION 43. Section 667-81, Hawaii Revised Statutes, is
2 amended by amending subsections (b), (c), and (d) to read as
3 follows:

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

21 (c) If the parties have complied with the requirements of
22 this part and have reached an agreement, the agreement shall be



1 memorialized in [~~a settlement document~~] writing and signed by
2 the parties or their authorized representatives. [~~If the~~
3 ~~parties or their authorized representatives participate in the~~
4 ~~dispute resolution session in person, the settlement document~~
5 ~~shall be signed in the presence of the neutral. If any of the~~
6 ~~parties or their authorized representatives participate in the~~
7 ~~dispute resolution through telephone, videoconference, or other~~
8 ~~immediately available contemporaneous telecommunications medium,~~
9 ~~the settlement document shall be signed and returned to the~~
10 ~~neutral no later than ten days after the conclusion of the~~
11 ~~dispute resolution session.] The parties shall be responsible~~
12 ~~for drafting any agreement reached[, and for filing or recording~~
13 ~~with the land court or the bureau of conveyances, as~~
14 ~~appropriate,] and enforcing the [~~settlement document.~~]~~
15 agreement. [~~The neutral shall file the settlement document with~~
16 ~~the neutral's closing report.] The [~~settlement document~~]~~
17 agreement shall be a contract between the parties and shall be
18 enforceable in a private contract action in a court of
19 appropriate jurisdiction in the event of breach by either party.
20 If the [~~settlement document~~] agreement allows for foreclosure or
21 other transfer of the subject property, the stay of the
22 foreclosure under section 667-83 shall be released upon [~~filing~~



1 ~~or recording]~~ the ~~[settlement document]~~ recordation of the
2 neutral's closing report ~~[with the land court or bureau of~~
3 ~~conveyances, as appropriate]~~. Thereafter, the office of the
4 assistant registrar of the land court or bureau of conveyances
5 may record a notice of sale or other conveyance document, as
6 appropriate.

7 (d) If the parties to a dispute resolution process reach
8 an agreement which resolves the matters at issue in the dispute
9 resolution before the first day of the scheduled dispute
10 resolution session scheduled pursuant to this section, the
11 parties shall notify the neutral by that date. The neutral
12 shall thereafter issue a closing report that the parties have
13 reached an agreement prior to the commencement of a dispute
14 resolution session. 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
19 ~~[at the bureau of conveyances or the land court, as~~
20 ~~appropriate]~~. If the agreement authorizes foreclosure, the stay
21 of the foreclosure under section 667-83 shall be released upon
22 ~~[filing or recording with the land court or bureau of~~



1 ~~conveyances, as appropriate.]~~ the recordation of the report.
2 Thereafter, the land court or bureau of conveyances may record a
3 notice of sale or other conveyance document, as appropriate. No
4 fees shall be refunded if the parties come to an agreement prior
5 to a dispute resolution session conducted pursuant to this
6 part."

7 SECTION 44. Section 667-82, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

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

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

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

22 (C) Refusal to cooperate or participate in dispute



1 resolution; or

2 (D) Refusal or failure to pay program fees under
3 section 667-79 in a timely manner.

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

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

8 (B) Refusal to cooperate or participate in dispute
9 resolution[~~-~~];

10 provided that failure by the mortgagee and the owner-
11 occupant to reach an agreement to resolve the dispute
12 shall not constitute failure by the mortgagee or the
13 owner-occupant to comply with the requirements of the
14 mortgage foreclosure dispute resolution program."

15 SECTION 45. Section 667-83, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The written notification of a case opening under
18 section 667-79 shall operate as a stay of the foreclosure
19 proceeding[~~-~~] and may be [~~filed or~~] recorded[~~, as appropriate,~~
20 ~~at the land court or bureau of conveyances-~~]; provided that the
21 written notification shall not act as a stay on a foreclosure
22 proceeding by an association unless the association has been



1 provided notice pursuant to sections 667-5.5, 667-21.5, or 667-
2 79."

3 SECTION 46. Section 667-86, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

12 PART IV

13 SECTION 47. Section 421J-A, Hawaii Revised Statutes, is
14 amended by amending subsection (h) to read as follows:

15 "(h) The amount of the special assessment assessed under
16 subsection (g) shall not exceed the total amount of unpaid
17 regular monthly common assessments that were assessed during the
18 [~~twelve~~] six months immediately preceding the completion of the
19 judicial or nonjudicial power of sale foreclosure."

20 SECTION 48. Section 454M-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~§454M-10~~ Penalty. Any person who violates any provision
2 of this chapter may be subject to an administrative fine of not
3 more than \$7,000 for each violation [~~; provided that \$1,000 of~~
4 ~~the aggregate fine amount shall be deposited into the mortgage~~
5 ~~foreclosure dispute resolution special fund established pursuant~~
6 ~~to section 667-86]~~."

7 SECTION 49. Section 514A-90, Hawaii Revised Statutes, is
8 amended by amending subsection (h) to read as follows:

9 "(h) The amount of the special assessment assessed under
10 subsection (g) shall not exceed the total amount of unpaid
11 regular monthly common assessments that were assessed during the
12 [~~twelve~~] six months immediately preceding the completion of the
13 judicial or nonjudicial power of sale foreclosure."

14 SECTION 50. Section 514B-146, Hawaii Revised Statutes, is
15 amended by amending subsection (h) to read as follows:

16 "(h) The amount of the special assessment assessed under
17 subsection (g) shall not exceed the total amount of unpaid
18 regular monthly common assessments that were assessed during the
19 [~~twelve~~] six months immediately preceding the completion of the
20 judicial or nonjudicial power of sale foreclosure."

21 SECTION 51. Section 667-53, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) An owner-occupant of a residential property that is
2 subject to nonjudicial foreclosure under part II may convert the
3 action to a judicial foreclosure provided that:

4 (1) A petition conforming to section 667-54 shall be filed
5 with the circuit court in the circuit where the
6 residential property is located, stating that the
7 owner-occupant of the property elects to convert the
8 nonjudicial foreclosure to a judicial foreclosure
9 proceeding no later than thirty days after the
10 foreclosure notice is served on the owner-occupant as
11 required by section 667-22;

12 (2) Within forty-five days of the filing of the petition,
13 all owner-occupants and mortgagors of an interest in
14 the residential property whose interests are pledged
15 or otherwise encumbered by the mortgage that is being
16 foreclosed and all persons who have signed the
17 promissory note or other instrument evidencing the
18 debt secured by the mortgage that is being foreclosed,
19 including without limitation co-obligors and
20 guarantors, shall file a statement in the circuit
21 court action that they agree to submit themselves to
22 the judicial process and the jurisdiction of the



1 circuit court; provided further that 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 (3) Filing a petition pursuant to paragraph (1) shall
8 automatically stay the nonjudicial foreclosure action
9 unless and until the judicial proceeding has been
10 dismissed;

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

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

21 (6) The fee for filing the petition shall be \$250, which
22 shall be deposited into the [~~mortgage foreclosure~~



1 ~~dispute resolution special fund established under~~
2 ~~section 667-86.] compliance resolution fund."~~

3 PART V

4 SECTION 52. Act 48, Session Laws of Hawaii 2011, is
5 amended as follows:

6 1. By amending section 10 to read:

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

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

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



- 1 (A) The number of mortgage loans the servicer is
- 2 servicing;
- 3 (B) The type and characteristics of loans serviced 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;
- 13 (F) The affiliations of the mortgage servicer,
- 14 including any lenders or mortgagees for which the
- 15 mortgage servicer provides service, any
- 16 subsidiary or parent entities of the mortgage
- 17 servicer, and a description of the authority held
- 18 by the mortgage servicer through its
- 19 affiliations; and
- 20 (G) Any other information that the commissioner may
- 21 require; and



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

17 2. By amending section 45 to read:

18 "SECTION 45. This Act shall take effect upon its approval;
19 provided that:

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



1 (2) ~~[Sections]~~ Section 1 ~~[, 13, and 14]~~ shall be repealed
2 on September 30, 2014 ~~[, and sections 514A-90(h) and~~
3 ~~514B-146(h), Hawaii Revised Statutes, shall be~~
4 ~~reenacted in the form in which they read on the day~~
5 ~~before the effective date of this Act];~~
6 (3) Section 10 shall take effect on July 1, 2012;
7 ~~[(4) Section 5 shall be repealed on December 31, 2012;]~~
8 ~~[(5)]~~ (4) Section 7 shall be repealed on September 30,
9 2014, and section 26-9(o), Hawaii Revised Statutes,
10 shall be reenacted in the form in which it read on the
11 day before the effective date of this Act; and
12 ~~[(6)]~~ (5) Upon the repeal of section 1, all moneys
13 remaining in the mortgage foreclosure dispute
14 resolution special fund established under section 667-
15 P, Hawaii Revised Statutes, shall be transferred to
16 the compliance resolution fund established under
17 section 26-9(o), Hawaii Revised Statutes."

PART VI

18
19 SECTION 53. Section 667-5, Hawaii Revised Statutes, is
20 repealed.

21 ~~["§667-5 Foreclosure under power of sale; notice;~~
22 ~~affidavit after sale; deficiency judgments. (a) When a power~~



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

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

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

22 ~~(i) The unit owner at the address shown in the~~



1 ~~records of the association and, if~~
2 ~~different, at the address of the unit being~~
3 ~~foreclosed; and~~

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

6 ~~(B) By publication of the notice once in each of~~
7 ~~three successive weeks, constituting three~~
8 ~~publications with the last publication to be not~~
9 ~~less than fourteen days before the day of sale,~~
10 ~~in a daily newspaper having the largest general~~
11 ~~circulation in the specific county in which the~~
12 ~~mortgaged property lies; provided that for~~
13 ~~property located in a county with a population of~~
14 ~~more than one hundred thousand but less than~~
15 ~~three hundred thousand, the public notice shall~~
16 ~~be published in the newspaper having the largest~~
17 ~~circulation expressly in the eastern or western~~
18 ~~half of the county, corresponding to the location~~
19 ~~of the subject property;~~

20 ~~(2) Give notice of the mortgagor's right to elect to~~
21 ~~participate in the mortgage foreclosure dispute~~
22 ~~resolution program pursuant to section 667-75 or to~~



1 ~~convert the nonjudicial power of sale foreclosure to a~~
2 ~~judicial foreclosure pursuant to section 667-53; and~~

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

5 ~~(b) Copies of the notice required under subsection (a)~~
6 ~~shall be:~~

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

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

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

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

21 ~~(2) The sale price of the mortgaged property once~~
22 ~~auctioned.~~



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

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

22 ~~Nothing in this section shall prohibit any other mortgagee~~



1 ~~or person who holds a lien on the residential property subject to~~
2 ~~the nonjudicial foreclosure, whose lien is subordinate to the~~
3 ~~mortgage being foreclosed and is extinguished by the nonjudicial~~
4 ~~foreclosure sale, from pursuing a monetary judgment against an~~
5 ~~owner-occupant.~~

6 ~~(f) Subject to the requirements of part V, the affidavit and~~
7 ~~copy of the notice shall be recorded and indexed by the~~
8 ~~registrar, in the manner provided in chapter 501 or 502, as the~~
9 ~~case may be.~~

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

12 SECTION 54. Section 667-5.7, Hawaii Revised Statutes, is
13 repealed.

14 ~~["§667-5.7] Public sale. At any public sale pursuant to~~
15 ~~section 667-5, the successful bidder at the public sale, as the~~
16 ~~purchaser, shall not be required to make a downpayment to the~~
17 ~~foreclosing mortgagee of more than ten per cent of the highest~~
18 ~~successful bid price."]~~

19 SECTION 55. Section 667-6, Hawaii Revised Statutes, is
20 repealed.

21 ~~["§667-6 Notice to mortgage creditors. Whenever a~~
22 ~~mortgage creditor having a mortgage lien on certain premises~~



1 ~~desires notice that another mortgage creditor having a mortgage~~
2 ~~lien on the same premises intends to foreclose the mortgage and~~
3 ~~sell the mortgaged property pursuant to a power of sale under~~
4 ~~section 667-5, the mortgage creditor may submit a written~~
5 ~~request to the mortgagee foreclosing or who may foreclose the~~
6 ~~mortgage by power of sale, to receive notice of the mortgagee's~~
7 ~~intention to foreclose the mortgage under power of sale. This~~
8 ~~request for notice may be submitted any time after the~~
9 ~~recording or filing of the subject mortgage at the bureau of~~
10 ~~conveyances or the land court, but must be submitted prior to~~
11 ~~the completion of the publication of the mortgagee's notice of~~
12 ~~intention to foreclose the mortgage and of the sale of the~~
13 ~~mortgaged property. This request shall be signed by the~~
14 ~~mortgage creditor, or its authorized representative, desiring to~~
15 ~~receive notice, specifying the name and address of the person to~~
16 ~~whom the notice is to be mailed. The mortgagee receiving the~~
17 ~~request shall thereafter give notice to all mortgage creditors~~
18 ~~who have timely submitted their request. The notice shall be~~
19 ~~sent by mail or otherwise communicated to the mortgage~~
20 ~~creditors, not less than seven calendar days prior to the date~~
21 ~~of sale.~~



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

8 SECTION 56. Section 667-7, Hawaii Revised Statutes, is
9 repealed.

10 [~~§667-7 Notice, contents, affidavit. (a) The notice of~~
11 ~~intention of foreclosure shall contain:~~

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

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

19 SECTION 57. Section 667-8, Hawaii Revised Statutes, is
20 repealed.

21 [~~§667-8 Affidavit as evidence, when. If it appears by~~
22 ~~the affidavit that the affiant has in all respects complied with~~



1 ~~the requirements of the power of sale and the statute, in~~
2 ~~relation to all things to be done by the affiant before selling~~
3 ~~the property, and has sold the same in the manner required by~~
4 ~~the power, the affidavit, or a duly certified copy of the record~~
5 ~~thereof, shall be admitted as evidence that the power of sale~~
6 ~~was duly executed."]~~

7 SECTION 58. Section 667-14, Hawaii Revised Statutes, is
8 repealed.

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

20 SECTION 59. Section 667-15, Hawaii Revised Statutes, is
21 repealed.

22 ~~"[§667-15] Location of public sale following power of~~



1 ~~sale foreclosure. The public sale of the mortgaged property~~
2 ~~shall be held only on grounds or at facilities under the~~
3 ~~administration of the State, as follows:~~

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

6 ~~(2) At a state facility in Hilo, for a public sale of~~
7 ~~mortgaged property located in the eastern portion of~~
8 ~~the county of Hawaii;~~

9 ~~(3) At a state facility in Kailua Kona, for a public sale~~
10 ~~of mortgaged property located in the western portion~~
11 ~~of the county of Hawaii;~~

12 ~~(4) At a state facility in the county seat of Maui, for a~~
13 ~~public sale of mortgaged property located in the~~
14 ~~county of Maui; and~~

15 ~~(5) At a state facility in the county seat of Kauai, for a~~
16 ~~public sale of mortgaged property located in the~~
17 ~~county of Kauai;~~

18 ~~as designated by the department of accounting and general~~
19 ~~services; provided that no public sale shall be held on grounds~~
20 ~~or at facilities under the administration of the judiciary. The~~
21 ~~public sale shall be held during business hours on a business~~
22 ~~day."]~~



1 SECTION 60. Section 667-21.6, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§667-21.6~~ Foreclosure of association lien; cure of~~
4 ~~default. If a unit owner notifies the association or its~~
5 ~~attorney by certified mail return receipt requested or by hand-~~
6 ~~delivery within five business days following a response to the~~
7 ~~unit owner's request for the amount to cure a default, together~~
8 ~~with an estimated amount of the foreclosing association's~~
9 ~~attorneys' fees and costs, and all other fees and costs related~~
10 ~~to the default estimated to be incurred by the foreclosing~~
11 ~~association, that it intends to cure the default, the~~
12 ~~association shall allow sixty calendar days to the unit owner to~~
13 ~~cure the default. The association shall not reject a reasonable~~
14 ~~payment plan for cure of the default; provided that a reasonable~~
15 ~~plan shall require the owner to pay at a minimum the current~~
16 ~~maintenance fee and some amount owed on the past due balance.~~
17 ~~From and after the date that the unit owner gives written notice~~
18 ~~to the association of its intent to cure the delinquency, any~~
19 ~~nonjudicial foreclosure of the lien shall be stayed pending the~~
20 ~~sixty day period or a longer period that is agreed upon by the~~
21 ~~parties."]~~



1 SECTION 61. Section 667-50, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§667-50] Definitions. For purposes of this chapter,~~
4 ~~"foreclosure notice" shall mean notice of intention to foreclose~~
5 ~~given pursuant to section 667-5 or notice of default and~~
6 ~~intention to foreclose prepared pursuant to section 667-22."]~~

7 SECTION 62. Section 667-60, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§667-60] Unfair or deceptive act or practice. Any~~
10 ~~foreclosing mortgagee who violates this chapter shall have~~
11 ~~committed an unfair or deceptive act or practice under section~~
12 ~~480-2."]~~

13 SECTION 63. Section 667-61, Hawaii Revised Statutes, is
14 repealed.

15 ~~["§667-61] Definitions. For the purposes of sections~~
16 ~~667-62 to 667-65, "time share interest" shall have the same~~
17 ~~meaning as in section 514E-1."]~~

18 SECTION 64. Section 667-72, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§667-72] Definitions. As used in this part:~~

21 ~~"Approved budget and credit counselor" means a budget and~~
22 ~~credit counseling agency that has received approval from a~~



1 ~~United States trustee or bankruptcy administrator to provide~~
2 ~~instructional courses concerning personal financial management~~
3 ~~pursuant to Title 11 United States Code section 111.~~

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

10 ~~"Association" has the same meaning as in sections 514B-3~~
11 ~~and 421J-2.~~

12 ~~"Department" means the department of commerce and consumer~~
13 ~~affairs.~~

14 ~~"Director" means the director of commerce and consumer~~
15 ~~affairs.~~

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

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



1 ~~"Mortgagor" has the same meaning as the term is defined in~~
2 ~~section 667-21.~~

3 ~~"Neutral" means a person who is a dispute resolution~~
4 ~~specialist assigned to facilitate the dispute resolution process~~
5 ~~required by this part.~~

6 ~~"Owner occupant" means a person, at the time that a notice~~
7 ~~of default and intention to foreclose is served on the mortgagor~~
8 ~~under the power of sale:~~

9 ~~(1) Who owns an interest in the residential property, and~~
10 ~~the interest is encumbered by the mortgage being~~
11 ~~foreclosed; and~~

12 ~~(2) For whom the residential property is and has been the~~
13 ~~person's primary residence for a continuous period of~~
14 ~~not less than two hundred days immediately preceding~~
15 ~~the date on which the notice is served."]~~

16 SECTION 65. In codifying the new sections added by
17 sections 2 and 3 of this Act, the revisor of statutes shall
18 substitute appropriate section numbers for the letters used in
19 designating the new sections in this Act.

20 SECTION 66. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 67. This Act shall take effect upon its approval;
2 provided that:

3 (1) Section 667-60, Hawaii Revised Statutes, in section 3
4 of this Act, shall take effect on October 1, 2014;

5 (2) Section 10 of this Act, amending section 607-5(a) and
6 (b), Hawaii Revised Statutes, and the amendments made
7 to section 667-53(a)(6), Hawaii Revised Statutes, in
8 section 26 of this Act, shall take effect on August
9 15, 2012;

10 (3) Section 25 of this Act, amending section 667-41,
11 Hawaii Revised Statutes, shall take effect on
12 September 1, 2012;

13 (4) Sections 47, 48, 49, 50, and 51 in part IV of this
14 Act, amending sections 421J-A(h), 454M-10, 514A-90,
15 514B-146, and 667-53(a)(6), Hawaii Revised Statutes,
16 shall take effect on September 30, 2014; and

17 (5) The amendments made to section 10 of Act 48, Session
18 Laws of Hawaii 2011, in section 52 of this Act, shall
19 take effect on June 30, 2012.



Report Title:

Mortgage Foreclosures; Homeowner Association Liens and Assessments

Description:

Implements the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments. Repeals the nonjudicial foreclosure process under part I of chapter 667, HRS. Repeals the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice. Following the expiration of the mortgage foreclosure dispute resolution program in 2014, specifies certain foreclosure violations as unfair or deceptive acts or practices, limits the types of violations that may void a title transfer of foreclosed property, and establishes a time limit for filing actions to void title transfers of foreclosed property.

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

