
A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1 **PART I**

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

9 The task force held several public meetings over the
10 legislative interim of 2010 to discuss the various items for
11 review raised under Act 162. Based upon these discussions, the
12 task force adopted recommendations, including proposed
13 legislation, in its report to the legislature for the regular
14 session of 2011. Some of the task force's recommendations were
15 included in Act 48, Session Laws of Hawaii 2011, a far-reaching
16 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
21 constitute a lien on the unit. The priority of the
22 association's lien shall, except as otherwise provided by law,



1 be as provided in the association documents or, if no priority
2 is provided in the association documents, by the recordation
3 date of the liens; provided that any amendment to the
4 association documents that governs the priority of liens on the
5 unit shall not provide that an association lien shall have
6 priority over a mortgage lien that is recorded before the
7 amendment is recorded. A lien recorded by an association for
8 unpaid assessments shall expire six years from the date of
9 recordation unless proceedings to enforce the lien are
10 instituted prior to the expiration of the lien; provided that
11 the expiration of a recorded lien shall in no way affect the
12 association's automatic lien that arises pursuant to this
13 subsection or the association documents. Any proceedings to
14 enforce an association's lien for any assessment shall be
15 instituted within six years after the assessment became due;
16 provided that if the owner of a unit subject to a lien of the
17 association files a petition for relief under the United States
18 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
19 instituting proceedings to enforce the association's lien shall
20 be tolled until thirty days after the automatic stay of
21 proceedings under section 362 of the United States Bankruptcy
22 Code (11 U.S.C. §362) is lifted.



1 The lien of the association may be foreclosed by action or
2 by nonjudicial or power of sale foreclosure procedures set forth
3 in chapter 667, by the managing agent or board, acting on behalf
4 of the association and in the name of the association; provided
5 that no association may exercise the nonjudicial or power of
6 sale remedies provided in chapter 667 to foreclose a lien
7 against any unit that arises solely from fines, penalties, legal
8 fees, or late fees, and the foreclosure of any such lien shall
9 be filed in court pursuant to part IA of chapter 667. In any
10 association foreclosure, the unit owner shall be required to pay
11 a reasonable rental for the unit, if so provided in the
12 association documents or the law, and the plaintiff in the
13 foreclosure shall be entitled to the appointment of a receiver
14 to collect the rental owed by the unit owner or any tenant of
15 the unit. If the association is the plaintiff, it may request
16 that its managing agent be appointed as receiver to collect the
17 rental from the tenant. The managing agent or board, acting on
18 behalf of the association and in the name of the association,
19 may bid on the unit at foreclosure sale and acquire and hold,
20 lease, mortgage, and convey the unit thereafter as the board
21 deems reasonable. Action to recover a money judgment for unpaid



1 assessments shall be maintainable without foreclosing or waiving
2 the lien securing the unpaid assessments owed.

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

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

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

20 (3) Thirty days after the public sale in a nonjudicial
21 power of sale foreclosure conducted pursuant to
22 chapter 667; or



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

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



- 1 (1) The amount of regular and special assessments included
2 in the assessment, including the due date of each
3 amount claimed;
- 4 (2) The amount of any penalty, late fee, lien filing fee,
5 and any other charge included in the assessment;
- 6 (3) The amount of attorneys' fees and costs, if any,
7 included in the assessment;
- 8 (4) That under Hawaii law, a unit owner has no right to
9 withhold assessments for any reason;
- 10 (5) That a unit owner has a right to demand mediation to
11 resolve disputes about the amount or validity of an
12 association's assessment; provided that the unit owner
13 immediately pays the assessment in full and keeps
14 assessments current; and
- 15 (6) That payment in full of the assessment does not
16 prevent the unit owner from contesting the assessment
17 or receiving a refund of amounts not owed.
- 18 Nothing in this section shall limit the rights of a unit owner
19 to the protection of all fair debt collection procedures
20 mandated under federal and state law.
- 21 (d) A unit owner who pays an association the full amount
22 claimed by the association may file a claim against the



1 association in court, including small claims court, or require
2 the association to mediate under section 421J-13 to resolve any
3 disputes concerning the amount or validity of the association's
4 claim. If the unit owner and the association are unable to
5 resolve the dispute through mediation, either party may file for
6 relief with a court; provided that a unit owner may only file
7 for relief in court if all amounts claimed by the association
8 are paid in full on or before the date of filing. If the unit
9 owner fails to keep all association assessments current during
10 the court hearing, the association may ask the court to
11 temporarily suspend the proceedings. If the unit owner pays all
12 association assessments within thirty days of the date of
13 suspension, the unit owner may ask the court to recommence the
14 proceedings. If the unit owner fails to pay all association
15 assessments by the end of the thirty-day period, the association
16 may ask the court to dismiss the proceedings. The unit owner
17 shall be entitled to a refund of any amounts paid to the
18 association that are not owed.

19 (e) In conjunction with or as an alternative to
20 foreclosure proceedings under subsection (a), where a unit is
21 owner-occupied, the association may authorize its managing agent
22 or board, after sixty days written notice to the unit owner of



1 the unit's share of the assessments, to terminate the delinquent
2 unit's access to the common areas and cease supplying a
3 delinquent unit with any and all services normally supplied or
4 paid for by the association. Any terminated services and
5 privileges shall be restored upon payment of all delinquent
6 assessments, but need not be restored until payment in full is
7 received.

8 (f) Before the board or managing agent may take the
9 actions permitted under subsection (e), the board shall adopt a
10 written policy providing for such actions and have the policy
11 approved by a majority vote of the unit owners, as provided in
12 the association documents, who are present in person or by proxy
13 or as otherwise permitted by the association documents, at an
14 annual or special meeting of the association or by the written
15 consent of a voting interest equal to a quorum of the unit
16 owners unless the association documents already permit the
17 process.

18 (g) Subject to this subsection and subsection (h), the
19 board may specially assess the amount of the unpaid regular
20 periodic assessments for assessments against a person who, in a
21 judicial or nonjudicial power of sale foreclosure, purchases a
22 delinquent unit; provided that:



- 1 (1) A purchaser who holds a mortgage on a delinquent unit,
2 which mortgage is not subordinate to the priority of
3 lien by the association, and who acquires the
4 delinquent unit through a judicial or nonjudicial
5 foreclosure proceeding, including purchasing the
6 delinquent unit at a foreclosure auction, shall not be
7 obligated to make, nor be liable for, payment of the
8 special assessment as provided for under this
9 subsection; and
- 10 (2) A person who subsequently purchases the delinquent
11 unit from the mortgagee referred to in paragraph (1)
12 shall be obligated to make, and shall be liable for,
13 payment of the special assessment provided for under
14 this subsection; and provided further that the
15 mortgagee or subsequent purchaser may require the
16 association to provide, at no charge, a notice of the
17 association's intent to claim a lien against the
18 delinquent unit for the amount of the special
19 assessment, prior to the subsequent purchaser's
20 acquisition of title to the delinquent unit. The
21 notice shall state the amount of the special



1 assessment, how that amount was calculated, and the
2 legal description of the unit.

3 (h) The amount of the special assessment assessed under
4 subsection (g) shall not exceed the total amount of unpaid
5 regular periodic assessments that were assessed during the six
6 months immediately preceding the completion of the judicial or
7 nonjudicial power of sale foreclosure.

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

10 "Completion" means:

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

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

16 "Regular periodic assessments" does not include:

17 (1) Any special assessment, except for a special
18 assessment imposed on all units as part of a budget
19 adopted pursuant to the association documents;

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

21 (3) Interest assessed by the association;

22 (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 §421J-B Association fiscal matters; collection of unpaid

5 assessments from tenants or rental agents. (a) If a unit owner
6 rents or leases the unit and is in default for thirty days or
7 more in the payment of the unit's share of the regular
8 assessments, the board, for as long as the default continues,
9 may demand in writing and receive each month, or any other
10 period of time for rental payment as provided in the lease, from
11 any tenant occupying the unit or rental agent renting the unit,
12 an amount sufficient to pay all sums due from the unit owner to
13 the association, including interest, if any, but the amount
14 shall not exceed the tenant's rent due at the time of demand.
15 The tenant's payment under this section shall discharge that
16 amount of payment from the tenant's rent obligation, and any
17 contractual provision to the contrary shall be void as a matter
18 of law.

19 (b) Before taking any action under this section, the board
20 shall give to the delinquent unit owner written notice of the
21 board's intent to collect the rent owed. The notice shall:

22 (1) Be sent both by first-class and certified mail;



1 (2) Set forth the exact amount the association claims is
2 due and owing by the unit owner; and

3 (3) Indicate the intent of the board to collect such
4 amount from the rent, along with any other amounts
5 that become due and remain unpaid.

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

8 (d) The payment of any portion of the unit's share of
9 regular assessments by the tenant pursuant to a written demand
10 by the board is a complete defense, to the extent of the amount
11 demand and paid by the tenant, in an action for nonpayment of
12 rent brought by the unit owner against a tenant.

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

15 (1) A commissioner or receiver has been appointed to take
16 charge of the unit pending a mortgage foreclosure;

17 (2) A mortgagee is in possession of the unit pending a
18 mortgage foreclosure; or

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

21 (f) In the event of any conflict between this section and
22 any provision of chapter 521, the conflict shall be resolved in



1 favor of this section; provided that if the tenant is entitled
2 to an offset of rent under chapter 521, the tenant may deduct
3 the offset from the amount due to the association, up to the
4 limits stated in chapter 521. Nothing herein precludes the unit
5 owner or tenant from seeking equitable relief from a court of
6 competent jurisdiction or seeking a judicial determination of
7 the amount owed.

8 (g) Before the board may take the actions permitted under
9 subsection (a), the board shall adopt a written policy providing
10 for the actions and have the policy approved by a majority vote
11 of the unit owners, as provided in the association documents,
12 who are present in person or by proxy or as otherwise permitted
13 by the association documents, at an annual or special meeting of
14 the association or by the written consent of a voting interest
15 equal to a quorum of the unit owners unless the association
16 documents already permit the process."

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

19 "Assessment" means funds collected by an association from
20 association members to operate and manage the association,
21 maintain property within the planned community for the common
22 use or benefit of association members, or provide services to



1 association members. The term also means expenditures made by,
2 or financial liabilities of, the association for operation of
3 the property and includes any allocations to reserves."

4 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
5 amended as follows:

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

8 "PART [~~I-~~] IA. FORECLOSURE BY ACTION [OR
9 FORECLOSURE BY POWER OF SALE]"

10 2. By adding three new sections to part IA, as designated
11 in this section of this Act, to be appropriately designated and
12 to read:

13 "§667- Deficiency judgment against owner-occupant
14 prohibited. The mortgagee or other person, excluding an
15 association, who completes the foreclosure by action 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.

19 §667- Association foreclosures; cure of default;
20 payment plan. If a foreclosure by action is initiated by an
21 association pursuant to section 421J-A, 514A-90, or 514B-146:



- 1 (1) At the time of the commencement of the foreclosure by
2 action, the association shall serve the unit owner
3 with written contact information for approved housing
4 counselors and approved budget and credit counselors;
- 5 (2) A unit owner may cure the default within sixty days
6 after service of the association's complaint for
7 foreclosure by action by paying the association the
8 full amount of the default, including the foreclosing
9 association's attorneys' fees and costs, and all other
10 fees and costs related to the default, along with any
11 additional amounts estimated to be incurred by the
12 foreclosing association;
- 13 (3) A unit owner may submit a payment plan within thirty
14 days after service of the association's complaint for
15 foreclosure by action. The unit owner shall submit
16 the payment plan to the association or its attorney by
17 certified mail return receipt requested or by hand
18 delivery. The association shall not reject a
19 reasonable payment plan. A unit owner's failure to
20 strictly perform any agreed-upon payment plan shall
21 entitle the association to pursue its remedies without
22 further delay.



1 For purposes of this paragraph, "reasonable payment
2 plan" means a plan that provides for:

3 (A) Timely payment of all assessments that become due
4 after the date that the payment plan is proposed;
5 and

6 (B) Additional monthly payments of an amount
7 sufficient to cure the default, within a
8 reasonable period under the circumstances as
9 determined by the board of directors in its
10 discretion; provided that a period of up to
11 twelve months shall be deemed reasonable; and
12 provided further that the board of directors
13 shall have the discretion to agree to a payment
14 plan in excess of twelve months;

15 (4) From and after the date that the unit owner gives
16 written notice to the association of the unit owner's
17 intent to cure the default pursuant to paragraph (2)
18 or timely submits a payment plan pursuant to paragraph
19 (3), any foreclosure by action shall be stayed during
20 the sixty-day period to cure the default or during the
21 term of the payment plan or a longer period that is
22 agreed upon by the parties;



1 (5) If the default is cured pursuant to paragraph (2), the
2 association shall dismiss the foreclosure by action.
3 If the parties have agreed on a payment plan pursuant
4 to paragraph (3), the association shall stay the
5 foreclosure by action. Within fourteen days of the
6 date of the cure or an agreement on a payment plan,
7 the association shall notify any person who was served
8 as a result of the foreclosure by action that the
9 action has been dismissed or stayed, as the case may
10 be. If a notice of pendency of action for the
11 foreclosure by action was recorded, a release of the
12 notice of pendency of action shall be recorded if the
13 action is dismissed; and

14 (6) If the default is not cured pursuant to paragraph (2),
15 or the parties have not agreed on a payment plan
16 pursuant to paragraph (3), the association may
17 continue to foreclose the association's lien under
18 foreclosure by action.

19 §667- Publication of notice of public sale. The
20 foreclosing mortgagee in a foreclosure by action shall have the
21 public notice of the public sale:



- 1 (1) Printed in not less than seven-point font and
2 published in the classified section of a newspaper of
3 general circulation in the real property tax zone in
4 which the mortgaged property is located, as shown on
5 the applicable county real property tax maps kept by
6 each respective county's real property tax assessment
7 division, except for the county of Kalawao which shall
8 be considered its own geographic area for the purposes
9 of this paragraph. For the purposes of this paragraph,
10 a newspaper is of general circulation if the
11 newspaper:
- 12 (A) Contains news of a general nature; and
13 (B) Is distributed within the county where the
14 mortgaged property is located:
- 15 (i) At least weekly;
16 (ii) For a minimum of six months unless
17 interrupted by strike, natural disaster, or
18 act of war or terror; and
19 (iii) To a minimum of one per cent of the
20 residents of the county, as determined by
21 the last decennial United States census and
22 as verified by an independent audit.



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

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

13 "Assessment" has the same meaning as "common expenses" in
14 section 514B-3 and "assessment" in section 421J-2.

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

17 "Association documents" has the same meaning as defined in
18 section 421J-2 and includes the "declaration" defined in section
19 514B-3 and the "bylaws" described in section 514B-108,
20 respectively.

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



1 "Borrower" means the borrower, maker, cosigner, or
2 guarantor under a mortgage agreement.

3 "Department" means the department of commerce and consumer
4 affairs.

5 "Director" means the director of commerce and consumer
6 affairs.

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

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

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

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

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



1 "Mortgaged property" means the property that is subject to
2 the lien of the mortgage.

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

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

10 "Neutral" means a person who is a dispute resolution
11 specialist assigned to facilitate the dispute resolution process
12 required by part V.

13 "Nonjudicial foreclosure" means foreclosure under power of
14 sale.

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

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

21 (2) For whom the residential property is and has been the
22 person's primary residence for a continuous period of



1 not less than two hundred days immediately preceding
2 the date on which the notice is served.

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

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

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

17 "Residential property" means real property that is improved
18 and used for residential purposes.

19 "Serve", when referring to providing notice of intention to
20 foreclose or notice of default and intention to foreclose
21 pursuant to a nonjudicial foreclosure, means to have service of
22 the notice of default and intention to foreclose made in



1 accordance with the service of process or the service of summons
2 under the Hawaii rules of civil procedure and under sections
3 634-35 and 634-36, excluding however, any return or affidavit of
4 service obligations required therein.

5 "Time share interest" has the same meaning as in section
6 514E-1.

7 "Unit" has the same meaning as in sections 421J-2 and 514B-
8 3.

9 "Unit owner" has the same meaning as "member" in section
10 421J-2 and "unit owner" in section 514B-3."

11 6. By adding a new part to be appropriately designated and
12 to read:

13 "PART . ASSOCIATION ALTERNATE POWER OF SALE

14 FORECLOSURE PROCESS

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

19 §667-B Notice of default and intention to foreclose;
20 contents; distribution; alternative remedies for failure to
21 serve. (a) When a unit owner has failed to pay an assessment,
22 and when the association intends to conduct a power of sale



1 foreclosure under this part, the association shall prepare a
2 written notice of default and intention to foreclose addressed
3 to the unit owner. The notice of default and intention to
4 foreclose shall state:

- 5 (1) The name and address of the association;
- 6 (2) The name and last known address of the unit owners;
- 7 (3) With respect to the unit, the address or a description
8 of its location, tax map key number, and certificate
9 of title or transfer certificate of title number if
10 registered in the land court;
- 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 association's attorney's fees and costs, and all other
17 fees and costs related to the default estimated to be
18 incurred by the association by the deadline date;
- 19 (6) The date by which the default must be cured, which
20 shall be within sixty days after service of the notice
21 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 association will become due,
5 that the association intends to conduct a power of
6 sale foreclosure to sell the unit at a public sale
7 without any court action and without going to court,
8 and that the association or any other person may
9 acquire the unit at the public sale;

10 (8) A statement that if the default is not cured by the
11 deadline date stated in the notice of default and
12 intention to foreclose, the association may publish
13 the public notice of the public sale on a website
14 maintained by the department, pursuant to section 667-
15 F(d) (2);

16 (9) The name, address, electronic address, and telephone
17 number of the attorney who is representing the
18 association; provided that the attorney shall be
19 licensed to practice law in the State and physically
20 located in the State; and



1 (10) Notice of the right of the unit owner to submit a
2 payment plan within thirty days pursuant to subsection
3 (c).

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

8 "IF THE DEFAULT ON THE PAYMENT OF ASSESSMENTS
9 CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE
10 UNIT MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT
11 ACTION AND WITHOUT GOING TO COURT.

12 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.
13 FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY
14 LICENSED IN THIS STATE.

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



1 (c) A unit owner may submit a payment plan within thirty
2 days after service of a notice of default and intention to
3 foreclose on the unit owner. The unit owner shall submit the
4 payment plan to the association or its attorney by certified
5 mail return receipt requested or by hand delivery. The
6 association shall not reject a reasonable payment plan. A unit
7 owner may also cure the default within sixty days after service
8 of a notice of default and intention to foreclose on the unit
9 owner by paying the association the full amount of the default,
10 including the foreclosing association's attorneys' fees and
11 costs, and all other fees and costs related to the default that
12 are incurred or estimated to be incurred by the foreclosing
13 association. From and after the date that the unit owner gives
14 written notice to the association of the unit owner's intent to
15 cure the default or timely submits a payment plan, any
16 nonjudicial foreclosure of the lien shall be stayed during the
17 sixty-day period to cure the default or during the term of the
18 payment plan or a longer period that is agreed upon by the
19 parties. A unit owner's failure to strictly perform any agreed-
20 upon payment plan shall entitle the association to pursue its
21 remedies without further delay.



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

- 3 (1) Timely payment of all assessments that become due
- 4 after the date that the payment plan is proposed; and
- 5 (2) Additional monthly payments of an amount sufficient to
- 6 cure the default, within a reasonable period under the
- 7 circumstances as determined by the board of directors
- 8 in its discretion; provided that a period of up to
- 9 twelve months shall be deemed reasonable; and provided
- 10 further that the board of directors shall have the
- 11 discretion to agree to a payment plan in excess of
- 12 twelve months.

13 (d) The notice of default and intention to foreclose shall
14 also include contact information for approved housing counselors
15 and approved budget and credit counselors.

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

- 18 (1) The unit owner;
- 19 (2) Any prior or junior creditors who have a recorded lien
- 20 on the unit before the recordation of the notice of
- 21 default and intention to foreclose under section
- 22 667-C;



- 1 (3) The state director of taxation;
- 2 (4) The director of finance of the county where the unit
3 is located; and
- 4 (5) Any other person entitled to receive notice under
5 section 667-5.5.
- 6 (f) If the association is unable to serve the notice of
7 default and intention to foreclose on the unit owner or any
8 other party listed in subsection (e)(2) to (5) within sixty
9 days, the association may:
- 10 (1) File a special proceeding in the circuit court of the
11 circuit in which the unit is located, for permission
12 to proceed with a nonjudicial foreclosure by serving
13 the unit owner only by publication and posting;
- 14 (2) Proceed with a nonjudicial foreclosure of the unit;
15 provided that if the association proceeds without the
16 permission of the court, the association shall not be
17 entitled to obtain a deficiency judgment against the
18 unit owner, and the unit owner shall have one year
19 from the date the association records the deed in the
20 nonjudicial foreclosure to redeem the unit by paying
21 the unit owner's delinquency to the association; or



1 (3) Take control of the unit if the unit is unoccupied,
2 after giving notice to the unit owner at the unit
3 owner's last known address as shown on the records of
4 the association or as determined by the association as
5 part of its due diligence to serve notice to the
6 owner. The association's authority to take control of
7 the unit pursuant to this paragraph shall be exercised
8 solely for the purpose of renting the unit to generate
9 rental income to pay the unit owner's delinquency, and
10 the association shall acquire no legal title to the
11 unit. In addition, the association shall credit the
12 net rental proceeds generated from the rental of the
13 unit to the owner's delinquency. For purposes of this
14 paragraph, "net rental proceeds" means the rental
15 proceeds remaining each month after deducting:

16 (A) The unit's regular monthly assessments that come
17 due while the association controls the unit
18 pursuant to this subsection;

19 (B) Any rental agent commissions; and

20 (C) Expenses incurred by the association in
21 maintaining the unit in rentable condition.



1 If the unit owner pays the full amount of the unit
 2 owner's delinquency to the association, the
 3 association shall return control of the unit to the
 4 unit owner; provided that the full amount of the unit
 5 owner's delinquency shall be calculated by deducting
 6 the total net rental proceeds collected by the
 7 association, if any, from the unit owner's
 8 delinquency.

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

21 **§667-D 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 agreed on a payment plan, the association
2 shall rescind the notice of default and intention to foreclose.
3 Within fourteen days of the date of the cure or an agreement on
4 a payment plan, the association shall so notify any person who
5 was served with the notice of default and intention to
6 foreclose. If the notice of default and intention to foreclose
7 was recorded, a release of the notice of default and intention
8 to foreclose shall be recorded.

9 (b) If the default is not cured as required by the notice
10 of default and intention to foreclose, or the parties have not
11 agreed on a payment plan, the association, without filing a
12 court action and without going to court, may foreclose the
13 association's lien under power of sale to sell the unit at a
14 public sale.

15 **§667-E Date of public sale of unit; place of sale. (a)**

16 The public sale of the unit shall take place on the later of the
17 following:

- 18 (1) At least sixty days after the public notice of the
19 public sale is distributed under section 667-F; or
20 (2) At least fourteen days after the date of the
21 publication of the third public notice advertisement
22 under section 667-F(d).



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

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

7 (2) At a state facility in Hilo, for a public sale of a
8 unit located in the districts of Hamakua, north Hilo,
9 south Hilo, or Puna;

10 (3) At a state facility in Kailua-Kona, for a public sale
11 of a unit located in the districts of north Kohala,
12 south Kohala, north Kona, south Kona, or Kau;

13 (4) At a state facility in the county seat of Maui, for a
14 public sale of a unit located in the county of Maui;
15 and

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

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



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

4 **§667-F Public notice of public sale; contents;**

5 **distribution; publication.** (a) The association shall prepare
6 the public notice of the public sale. The public notice shall
7 state:

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

9 (2) The unpaid balance of the moneys owed to the
10 association;

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

13 (4) The name of the unit owner;

14 (5) The name of the association;

15 (6) The name of any prior or junior creditors having a
16 recorded lien on the unit before the recordation of
17 the notice of default and intention to foreclose under
18 section 667-C;

19 (7) The name, the address in the State, and the telephone
20 number in the State of the person in the State
21 conducting the public sale; and

22 (8) The terms and conditions of the public sale.



1 (b) The public notice shall also contain wording
2 substantially similar to the following in all capital letters:

3 "THE DEFAULT UNDER THE ASSOCIATION
4 DOCUMENTS MAY BE CURED NO LATER THAN THREE
5 BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC
6 SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT
7 THAT WOULD BE OWED TO THE ASSOCIATION PLUS
8 THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS,
9 AND ALL OTHER FEES AND COSTS INCURRED BY THE
10 FORECLOSING ASSOCIATION RELATED TO THE
11 DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN
12 THE ASSOCIATION AND THE UNIT OWNER. THERE
13 IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT
14 OF REDEMPTION AFTER THAT TIME. IF THE
15 DEFAULT IS SO CURED, THE PUBLIC SALE SHALL
16 BE CANCELED."

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

20 (1) Mailed or delivered to the unit owners at their
21 respective last known addresses;



- 1 (2) Mailed or delivered to any prior or junior creditors
- 2 having a recorded lien on the unit before the
- 3 recording of the notice of default and intention to
- 4 foreclose under section 667-C;
- 5 (3) Mailed or delivered to the state director of taxation;
- 6 (4) Mailed or delivered to the director of finance of the
- 7 county where the unit is located;
- 8 (5) Posted on the unit or on such other real property of
- 9 which the unit is a part; and
- 10 (6) Mailed or delivered to any other person entitled to
- 11 receive notice under section 667-5.5 or 667-21.5.
- 12 (d) The association shall have the public notice of the
- 13 public sale:
- 14 (1) Printed in not less than seven-point font and
- 15 published in the classified section of a newspaper of
- 16 general circulation in the real property tax zone in
- 17 which the unit is located, as shown on the applicable
- 18 county real property tax maps kept by each respective
- 19 county's real property tax assessment division, except
- 20 for the county of Kalawao which shall be considered
- 21 its own geographic area for the purposes of this



1 paragraph. For the purposes of this paragraph, a
2 newspaper is of general circulation if the newspaper:

3 (A) Contains news of a general nature; and

4 (B) Is distributed within the county where the unit
5 is located:

6 (i) At least weekly;

7 (ii) For a minimum of six months unless
8 interrupted by strike, natural disaster, or
9 act of war or terror; and

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

14 A person may apply to the circuit court for an order
15 confirming a newspaper to be of general circulation
16 for purposes of this paragraph, which the court shall
17 grant upon proof of compliance with this paragraph.

18 The public notice shall be published once each week
19 for three consecutive weeks, constituting three
20 publications. The public sale shall take place no
21 sooner than fourteen days after the date of the



1 publication of the third public notice advertisement;
2 or

3 (2) Not less than twenty-eight days before the date of the
4 public sale, published on a website maintained by the
5 department; provided that the unit is owned by an
6 owner-occupant.

7 **§667-G Postponement, cancellation of sale.** (a) The
8 public sale may be either postponed or canceled by the
9 association. Notice of the postponement or the cancellation of
10 the public sale shall be:

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

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

15 (b) If there is a postponement of the public sale of the
16 unit, a new public notice of the public sale shall be published
17 once in the format described in section 667-F. The new public
18 notice shall state that it is a notice of a postponed sale. The
19 public sale shall take place no sooner than fourteen days after
20 the date of the publication of the new public notice. Not less
21 than fourteen days before the date of the public sale, a copy of
22 the new public notice shall be posted on the unit or on another



1 real property of which the unit is a part, and it shall be
2 mailed or delivered to the unit owner and to any other person
3 entitled to receive notice under section 667-B(e).

4 (c) Upon the fourth postponement of every series of four
5 consecutive postponements, the association shall follow all of
6 the public notice of public sale requirements of section 667-F,
7 including the requirements of mailing and posting under section
8 667-F(c) and of publication under section 667-F(d).

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

20 **§667-H Authorized bidder; successful bidder.** Any person,
21 including the association, shall be authorized to bid for the
22 unit at the public sale and to purchase the unit. The highest



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

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



1 conditions of the public sale or may begin the public sale
2 process again.

3 **§667-J Conveyance of property on payment of purchase**
4 **price; distribution of sale proceeds.** (a) After the purchaser
5 completes the purchase by paying the full purchase price and the
6 costs for the purchase, the unit shall be conveyed to the
7 purchaser by a conveyance document. The conveyance document
8 shall be in a recordable form and shall be signed by the
9 association in the association's name. The unit owner shall not
10 be required to sign the conveyance document.

11 (b) From the sale proceeds, after paying in the following
12 order:

- 13 (1) The association's attorney's fees and costs;
14 (2) The fees and costs of the power of sale foreclosure;
15 (3) The moneys owed to the association; and
16 (4) All other liens and encumbrances in the order of
17 priority as a matter of law,
18 the balance of the sale proceeds shall be distributed by the
19 association to junior creditors having valid liens on the unit
20 in the order of their priority and not pro rata. Any remaining
21 surplus after payment in full of all valid lien creditors shall
22 be distributed to the unit owner.



1 (c) Lien creditors prior to the association shall not be
2 forced to their right of recovery. However, the association and
3 any prior lien creditor may agree in writing that the proceeds
4 from the sale will be distributed by the association to the
5 prior lien creditor towards the payment of moneys owed to the
6 prior lien creditor before any moneys are paid to the
7 association.

8 **§667-K Affidavit after public sale; contents.** (a) After
9 the public sale is held, the association shall sign an affidavit
10 under penalty of perjury:

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



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

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

11 (2) The association is an "association" as defined in the
12 power of sale foreclosure law;

13 (3) The power of sale foreclosure is of an association
14 lien. If the lien was recorded, the lien was dated
15 _____, and recorded in the
16 _____ (bureau of conveyances or office
17 of the assistant registrar of the land court) as
18 _____ (recordation information). The
19 unit is located at: _____ (address or
20 description of location) and is identified by tax map
21 key number: _____. The legal
22 description of the property, including the certificate



1 of title or transfer certificate of title number if
2 registered with the land court, is attached as Exhibit
3 "A";

4 (4) Pursuant to the power of sale provision of law or
5 association documents, the power of sale foreclosure
6 was conducted as required by the power of sale
7 foreclosure law. The following is a summary of what
8 was done:

9 (A) A notice of default and intention to foreclose
10 was served on the unit owner and the following
11 person: _____. The notice of
12 default and intention to foreclose was served on
13 the following date and in the following manner:
14 _____;

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

21 (C) The notice of default and intention to foreclose
22 was recorded before the deadline date in the



1 _____ (bureau of conveyances or
 2 office of the assistant registrar of the land
 3 court). The notice was recorded on
 4 _____ (date) as document no.
 5 _____ . A copy of the recorded
 6 notice is attached as Exhibit "1";

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

9 (E) A public notice of the public sale was initially
 10 published in the classified section of the
 11 _____, in accordance with section
 12 667-F(d), Hawaii Revised Statutes, once each week
 13 for three consecutive weeks on the following
 14 dates: _____ . A copy of the

15 affidavit of publication for the last public
 16 notice of the public sale is attached as Exhibit
 17 "2". The date of the public sale was
 18 _____ (date). The last
 19 publication was not less than fourteen days
 20 before the date of the public sale;

21 (F) The public notice of the public sale was sent to
 22 the unit owner, to the state director of



1 taxation, to the director of finance of the
 2 county where the unit is located, and to the
 3 following: _____. The public
 4 notice was sent on the following dates and in the
 5 following manner: _____. Those
 6 dates were after the deadline date in the notice
 7 of default and intention to foreclose, and those
 8 dates were at least sixty days before the date of
 9 the public sale;

10 (G) The public notice of the public sale was posted
 11 on the unit or on such other real property of
 12 which the unit is a part on _____
 13 (date). That date was at least sixty days before
 14 the date of the public sale;

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



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

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

4 **§667-L Recordation of affidavit, conveyance document;**

5 **effect.** (a) The affidavit required under section 667-K and the
6 conveyance document shall be recorded no earlier than ten days
7 after the public sale is held but not later than forty-five days
8 after the public sale is held. The affidavit and the conveyance
9 document may be recorded separately and on different days.

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

13 (b) When both the affidavit and the conveyance document
14 are recorded:

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

16 (2) All persons claiming by, through, or under the unit
17 owner and all other persons having liens on the unit
18 junior to the lien of the association shall be forever
19 barred of and from any and all right, title, interest,
20 and claims at law or in equity in and to the unit and
21 every part of the unit, except as otherwise provided
22 by law;

1 (3) The lien of the association and all liens junior in
2 priority to the lien of an association shall be
3 automatically extinguished from the unit; and

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

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

18 **§667-M Recordation; full satisfaction of debt by borrower.**

19 Except as provided in subsection 667-B(f)(2), the recordation of
20 both the conveyance document and the affidavit shall not operate
21 as full satisfaction of the debt owed by the unit owner to the
22 association unless the sale proceeds from the unit or the



1 amounts paid by a purchaser under the special assessment
2 permitted by section 421J-A or 514B-146 are sufficient to
3 satisfy the unit owner's debt to the association, including the
4 association's legal fees and costs. The debts of other lien
5 creditors are unaffected except as provided in this part.

6 **§667-N Prohibited conduct.** It shall be a prohibited
7 practice for any association to engage in any of the following
8 practices:

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

20 **PART III**

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



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

3 (1) Safeguard and account for any money handled for the
4 borrower;

5 (2) Act with reasonable skill, care, timeliness,
6 promptness, and diligence;

7 (3) Disclose to the commissioner in the servicer's license
8 application and each yearly renewal a complete,
9 current schedule of the ranges of costs and fees it
10 charges borrowers for its servicing-related
11 activities;

12 (4) File a report with each yearly renewal statement in a
13 form and format acceptable to the director detailing
14 the servicer's activities in this State, including:

15 (A) The number of mortgage loans the servicer is
16 servicing;

17 (B) The type and characteristics of loans serviced in
18 this State;

19 (C) The number of serviced loans in default, along
20 with a breakdown of thirty-, sixty-, and ninety-
21 day delinquencies;



- 1 (D) Information on loss mitigation activities,
2 including details on workout arrangements
3 undertaken;
- 4 (E) Information on foreclosures commenced in this
5 State;
- 6 (F) The affiliations of the mortgage servicer,
7 including any lenders or mortgagees for which the
8 mortgage servicer provides service, any
9 subsidiary or parent entities of the mortgage
10 servicer, and a description of the authority held
11 by the mortgage servicer through its
12 affiliations; and
- 13 (G) Any other information that the commissioner may
14 require; and
- 15 (5) Maintain an office in the State that is staffed by at
16 least one agent or employee for the purposes of
17 addressing consumer inquiries or complaints and
18 accepting service of process; provided that the
19 mortgage servicer's business constitutes at least a
20 twenty per cent share of the portion of the total
21 mortgage loan service market in the State that was
22 serviced by mortgage servicers licensed under this



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

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

11 "**§454M-10 Penalty.** Any person who violates any provision
12 of this chapter may be subject to an administrative fine of [~~at~~
13 ~~least \$1,000 and~~] not more than \$7,000 for each violation;
14 provided that \$1,000 of the aggregate fine amount shall be
15 deposited into the mortgage foreclosure dispute resolution
16 special fund established pursuant to section 667-86."

17 SECTION 6. Section 501-151, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§501-151 Pending actions, judgments; recording of,**
20 **notice.** No writ of entry, action for partition, or any action
21 affecting the title to real property or the use and [~~occupation~~]
22 occupancy thereof or the buildings thereon, and no judgment, nor



1 any appeal or other proceeding to vacate or reverse any
2 judgment, shall have any effect upon registered land as against
3 persons other than the parties thereto, unless a full memorandum
4 thereof, containing also a reference to the number of the
5 certificate of title of the land affected is filed or recorded
6 and registered. Except as otherwise provided, every judgment
7 shall contain or have endorsed on it the State of Hawaii general
8 excise taxpayer identification number, the federal employer
9 identification number, or the last four digits only of the
10 social security number for persons, corporations, partnerships,
11 or other entities against whom the judgment is rendered. If the
12 judgment debtor has no social security number, State of Hawaii
13 general excise taxpayer identification number, or federal
14 employer identification number, or if that information is not in
15 the possession of the party seeking registration of the
16 judgment, the judgment shall be accompanied by a certificate
17 that provides that the information does not exist or is not in
18 the possession of the party seeking registration of the
19 judgment. Failure to disclose or disclosure of an incorrect
20 social security number, State of Hawaii general excise taxpayer
21 identification number, or federal employer identification number
22 shall not in any way adversely affect or impair the lien created



1 upon recording of the judgment. This section does not apply to
2 attachments, levies of execution, or to proceedings for the
3 probate of wills, or for administration in a probate court;
4 provided that in case notice of the pendency of the action has
5 been duly registered it is sufficient to register the judgment
6 in the action within sixty days after the rendition thereof.

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

9 Notice of the pendency of an action in a United States
10 District Court, as well as a court of the State of Hawaii, may
11 be recorded.

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

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

16 The party seeking registration of a judgment shall redact
17 the first five digits of any social security number by blocking
18 the numbers out on the copy of the judgment to be filed or
19 recorded."

20 SECTION 7. Section 501-241, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Without limiting the generality of subsection (a),
2 the following instruments need not be registered pursuant to
3 this chapter to be effective and shall be recorded in the bureau
4 of conveyances pursuant to chapter 502:

- 5 (1) An assignment or other instrument transferring a
6 leasehold time share interest;
- 7 (2) A mortgage or other instrument granting a lien on a
8 leasehold time share interest;
- 9 (3) An agreement of sale for the sale of a leasehold time
10 share interest. Any such agreement of sale shall be
11 subject to section 502-85 and shall not be subject to
12 section 501-101.5;
- 13 (4) A lien or notice of lien pertaining to a leasehold
14 time share interest in favor of a time share owners
15 association, an association of owners under chapter
16 514A or 514B, or a similar homeowner's association;
- 17 (5) A judgment, decree, order of court, attachment, writ,
18 or other process against a leasehold time share
19 interest;
- 20 (6) A mechanic's or materialman's lien or other lien upon
21 a leasehold time share interest;



- 1 (7) A lis pendens or notice of pendency of action, notice,
2 affidavit, demand, certificate, execution, copy of
3 execution, officer's return, or other instrument
4 relating to a leasehold time share interest and
5 otherwise required or permitted to be recorded or
6 registered in connection with the enforcement or
7 foreclosure of any lien, whether by way of power of
8 sale pursuant to [~~section 667-5,~~] chapter 667 or
9 otherwise;
- 10 (8) A power of attorney given by the owner of a leasehold
11 time share interest or the vendor or vendee under an
12 agreement of sale for the sale of a leasehold time
13 share interest, a mortgagee or other lienor having a
14 mortgage or lien upon a leasehold time share interest,
15 or another party holding a claim or encumbrance
16 against or an interest in a leasehold time share
17 interest; or
- 18 (9) An instrument assigning, extending, continuing,
19 dissolving, discharging, releasing in whole or in
20 part, reducing, canceling, extinguishing, or otherwise
21 modifying or amending any of the foregoing
22 instruments."



1 SECTION 8. Section 501-263, Hawaii Revised Statutes, is
2 amended to read as follows:

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

8 (1) Any document, instrument, or paper assigning,
9 extending, continuing, dissolving, discharging,
10 releasing in whole or in part, reducing, canceling,
11 extinguishing, or otherwise modifying or amending any
12 of the following documents, instruments, or papers
13 that have been registered pursuant to this chapter and
14 that pertain to deregistered land:

- 15 (A) A mortgage;
- 16 (B) An agreement of sale for the sale of a fee time
17 share interest or interest in other deregistered
18 land. After the recordation of the certificate
19 of title, any agreement of sale shall be subject
20 to section 502-85 and shall not be subject to
21 section 501-101.5;



- 1 (C) A correction deed, correction mortgage, or other
2 document, instrument, or paper correcting a
3 document, instrument, or paper registered
4 pursuant to this chapter;
- 5 (D) A lien or claim of lien on a fee time share
6 interest held or claimed by a time share owners
7 association, an association of apartment owners,
8 or other homeowners' association or a lien or
9 claim on an interest in other deregistered land
10 held by a lienor or person claiming a lien;
- 11 (E) A lease that demises a fee time share interest or
12 interest in other deregistered land;
- 13 (F) An order of court, attachment, writ, or other
14 process against a fee time share interest or
15 interest in other deregistered land;
- 16 (G) A mechanic's or materialman's lien or other lien
17 upon a fee time share interest or interest in
18 other deregistered land;
- 19 (H) A lis pendens or notice of pendency of action,
20 notice, affidavit, demand, certificate,
21 execution, copy of execution, officer's return,
22 or other instrument relating to a fee time share



1 interest or interest in other deregistered land
2 and otherwise required or permitted to be
3 recorded or registered in connection with the
4 enforcement or foreclosure of any lien, whether
5 by way of power of sale pursuant to [~~a power of~~
6 ~~sale under section 667-5,~~] chapter 667 or
7 otherwise; or

8 (I) A power of attorney given by the owner of a fee
9 time share interest or interest in other
10 deregistered land or the vendor or vendee under
11 an agreement of sale for the sale of a fee time
12 share interest or interest in other deregistered
13 land, a mortgagee or other lienor having a
14 mortgage or lien upon a fee time share interest
15 or interest in other deregistered land, or
16 another party holding a claim or encumbrance
17 against or an interest in a fee time share
18 interest or interest in other deregistered land;

19 (2) A lis pendens or notice of pendency of action, notice,
20 affidavit, demand, certificate, execution, copy of
21 execution, officer's return, or other instrument
22 relating to a fee time share interest or interest in



1 other deregistered land and otherwise required or
2 permitted to be recorded or registered in connection
3 with the enforcement or foreclosure of any lien,
4 whether by way of power of sale pursuant to [~~a power~~
5 ~~of sale under section 667-5,~~] chapter 667 or
6 otherwise; and

7 (3) Any declaration annexing property to, any declaration
8 deannexing property from, any amendment or supplement
9 to, correction of, or release or termination of, any
10 of the following documents, instruments, or papers
11 that have been registered pursuant to this chapter and
12 that pertain to deregistered land:

13 (A) A declaration of covenants, conditions,
14 restrictions, or similar instrument, by whatever
15 name denominated, establishing or governing a
16 time share plan, or the bylaws of a time share
17 owners association, notice of time share plan, or
18 other time share instrument;

19 (B) A declaration of condominium property regime or
20 similar declaration by whatever name denominated,
21 the bylaws of the association of apartment
22 owners, the condominium map, any declaration of



1 merger and any instrument effecting a merger;
2 provided that if only some of the condominium
3 apartments are included in the time share plan,
4 then it shall be necessary to register, and to
5 note on the certificate of title for any
6 apartment not included in the time share plan:
7 (i) Any declaration annexing property to the
8 condominium property regime;
9 (ii) Any declaration deannexing property from the
10 condominium property regime;
11 (iii) Any instrument effecting a merger of two or
12 more condominium projects or two or more
13 phases of a condominium project; and
14 (iv) Any document, instrument, or paper amending,
15 supplementing, correcting, releasing, or
16 terminating any of the documents listed in
17 subparagraph (B)(i) through (iii), the
18 declaration of condominium property regime,
19 the bylaws of the association of apartment
20 owners, the condominium map, or any
21 declaration of merger; and



1 (C) A declaration of covenants, conditions,
2 restrictions, or similar instrument, by whatever
3 name denominated, the bylaws of any homeowners
4 association, any declaration of annexation or
5 deannexation, any amendments and supplements
6 thereto, and any cancellation or extinguishment
7 thereof, any declaration of merger and any
8 instrument effecting a merger; provided that if
9 only some of the parcels of land covered by the
10 declaration constitutes deregistered land, and if
11 one or more of the remaining parcels constitute
12 registered land, then it shall be necessary to
13 register, and to note on the certificate of title
14 for any registered land:

15 (i) Any declaration annexing property to the
16 declaration;

17 (ii) Any declaration deannexing property from the
18 operation of the declaration; and

19 (iii) Any document, instrument, or paper amending,
20 supplementing, correcting, releasing, or
21 terminating any of the documents listed in
22 subparagraph (C)(i) or (ii), the declaration



1 of covenants, conditions, restrictions, or
2 the bylaws of the homeowners association."

3 SECTION 9. Section 514A-90, Hawaii Revised Statutes, is
4 amended as follows:

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

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

- 10 (1) Liens for taxes and assessments lawfully imposed by
- 11 governmental authority against the apartment; and
- 12 (2) All sums unpaid on any mortgage of record that was
- 13 recorded prior to the recordation of notice of a lien
- 14 by the association of apartment owners, and costs and
- 15 expenses including attorneys' fees provided in such
- 16 mortgages[-];

17 provided that a lien recorded by an association of apartment
18 owners for unpaid assessments shall expire six years from the
19 date of recordation unless proceedings to enforce the lien are
20 instituted prior to the expiration of the lien; provided that
21 the expiration of a recorded lien shall in no way affect the
22 association of apartment owners' automatic lien that arises



1 pursuant to this subsection or the declaration or bylaws. Any
2 proceedings to enforce an association of apartment owners' lien
3 for any assessment shall be instituted within six years after
4 the assessment became due; provided that if the owner of an
5 apartment subject to a lien of the association of apartment
6 owners files a petition for relief under the United States
7 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
8 instituting proceedings to enforce the association of apartment
9 owners' lien shall be tolled until thirty days after the
10 automatic stay of proceedings under section 362 of the United
11 States Bankruptcy Code (11 U.S.C. §362) is lifted.

12 The lien of the association of apartment owners may be
13 foreclosed by action or by nonjudicial or power of sale
14 foreclosure procedures set forth in chapter 667, by the managing
15 agent or board of directors, acting on behalf of the association
16 of apartment owners[~~, in like manner as a mortgage of real~~
17 ~~property.~~] and in the name of the association of apartment owners;
18 provided that no association of apartment owners may exercise
19 the nonjudicial or power of sale remedies provided in chapter
20 667 to foreclose a lien against any apartment that arises solely
21 from fines, penalties, legal fees, or late fees, and the
22 foreclosure of any such lien shall be filed in court pursuant to



1 part IA of chapter 667. In any such foreclosure, the apartment
2 owner shall be required to pay a reasonable rental for the
3 apartment, if so provided in the bylaws[7] or the law, and the
4 plaintiff in the foreclosure shall be entitled to the appointment
5 of a receiver to collect the rental owed[-] by the apartment owner
6 or any tenant of the apartment. If the association of apartment
7 owners is the plaintiff, it may request that its managing agent be
8 appointed as receiver to collect the rent from the tenant. The
9 managing agent or board of directors, acting on behalf of the
10 association of apartment owners[7] and in the name of the
11 association of apartment owners, unless prohibited by the
12 declaration, may bid on the apartment at foreclosure sale, and
13 acquire and hold, lease, mortgage, and convey the apartment.
14 Action to recover a money judgment for unpaid common expenses
15 shall be maintainable without foreclosing or waiving the lien
16 securing the unpaid common expenses owed.

17 (b) Except as provided in subsection (g), when the mortgagee
18 of a mortgage of record or other purchaser of an apartment obtains
19 title to the apartment as a result of foreclosure of the mortgage,
20 the acquirer of title and the acquirer's successors and assigns
21 shall not be liable for the share of the common expenses or
22 assessments by the association of apartment owners chargeable to



1 the apartment [~~which~~] that became due prior to the acquisition of
2 title to the apartment by the acquirer. The unpaid share of
3 common expenses or assessments shall be deemed to be common
4 expenses collectible from all of the apartment owners, including
5 the acquirer and the acquirer's successors and assigns. The
6 mortgagee of record or other purchaser of the apartment shall be
7 deemed to acquire title and shall be required to pay the
8 apartment's share of common expenses and assessments beginning:

- 9 (1) Thirty-six days after the order confirming the sale to
10 the purchaser has been filed with the court;
- 11 (2) Sixty days after the hearing at which the court grants
12 the motion to confirm the sale to the purchaser;
- 13 (3) Thirty days after the public sale in a nonjudicial
14 power of sale foreclosure conducted pursuant to
15 [~~section 667-5;~~] chapter 667; or
- 16 (4) Upon the recording of the instrument of conveyance,
17 whichever occurs first; provided that the mortgagee of record or
18 other purchaser of the apartment shall not be deemed to acquire
19 title under paragraph (1), (2), or (3), if transfer of title is
20 delayed past the thirty-six days specified in paragraph (1), the
21 sixty days specified in paragraph (2), or the thirty days
22 specified in paragraph (3), when a person who appears at the



1 hearing on the motion or a party to the foreclosure action
 2 requests reconsideration of the motion or order to confirm sale,
 3 objects to the form of the proposed order to confirm sale,
 4 appeals the decision of the court to grant the motion to confirm
 5 sale, or the debtor or mortgagor declares bankruptcy or is
 6 involuntarily placed into bankruptcy. In any such case, the
 7 mortgagee of record or other purchaser of the apartment shall be
 8 deemed to acquire title upon recordation of the instrument of
 9 conveyance."

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

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

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

20 "Completion" means:

21 (1) In a nonjudicial power of sale foreclosure, when
 22 the affidavit [~~required under section 667-5 is~~



1 ~~filed;~~] after public sale is recorded pursuant to
2 section 667-33; and

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

6 "Regular monthly common assessments" shall not include:

7 (1) Any other special assessment, except for a special
8 assessment imposed on all apartments as part of a
9 budget adopted pursuant to section 514A-83.6;

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

11 (3) Interest assessed by the association of apartment
12 owners;

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

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

17 SECTION 10. Section 514B-146, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(a) All sums assessed by the association but unpaid for
21 the share of the common expenses chargeable to any unit shall



1 constitute a lien on the unit with priority over all other
2 liens, except:

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

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 costs and expenses
8 including attorneys' fees provided in such
9 mortgages[-];

10 provided that a lien recorded by an association for unpaid
11 assessments shall expire six years from the date of recordation
12 unless proceedings to enforce the lien are instituted prior to
13 the expiration of the lien; provided that the expiration of a
14 recorded lien shall in no way affect the association's automatic
15 lien that arises pursuant to this subsection or the declaration
16 or bylaws. Any proceedings to enforce an association's lien for
17 any assessment shall be instituted within six years after the
18 assessment became due; provided that if the owner of a unit
19 subject to a lien of the association files a petition for relief
20 under the United States Bankruptcy Code (11 U.S.C. §101 et
21 seq.), the period of time for instituting proceedings to enforce
22 the association's lien shall be tolled until thirty days after



1 the automatic stay of proceedings under section 362 of the
2 United States Bankruptcy Code (11 U.S.C. §362) is lifted.

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



1 foreclosure sale, and acquire and hold, lease, mortgage, and
2 convey the unit. Action to recover a money judgment for unpaid
3 common expenses shall be maintainable without foreclosing or
4 waiving the lien securing the unpaid 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~~] six 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 11. 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[~~-~~]; provided further that the



1 fees prescribed by subsection (b) (1a) shall be deposited by the
2 clerk of the circuit court as provided in section 667-53(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 order no 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 section no 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 12. Section 667-3, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§667-3 Proceeds, how applied.** Mortgage and other
 20 creditors shall be entitled to payment according to the priority
 21 of their liens, and not pro rata; and judgments of foreclosure
 22 [~~and foreclosures by power of sale~~] that are conducted in



1 compliance with this part [~~and for which an affidavit is~~
2 ~~recorded as required under section 667-5~~] shall operate to
3 extinguish the liens of subsequent mortgages and liens of the
4 same property, without forcing prior mortgagees or lienors to
5 their right of recovery. The surplus after payment of the
6 mortgage foreclosed, shall be applied pro tanto to the next
7 junior mortgage or lien, and so on to the payment, wholly or in
8 part, of mortgages and liens junior to the one assessed."

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

11 **"§667-5.5 Foreclosure notice; planned communities;**
12 **condominiums; cooperative housing projects.** Notwithstanding any
13 law or agreement to the contrary, any person who forecloses on a
14 property under this part within a planned community, a
15 condominium apartment or unit, or an apartment in a cooperative
16 housing project shall notify, by registered or certified mail,
17 the board of directors of the planned community association, the
18 association of owners of the condominium project, or the
19 cooperative housing project in which the property to be
20 foreclosed is located, of the following:

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



1 (2) Any election by an owner-occupant of the property that
2 is the subject of the foreclosure to participate in
3 the mortgage foreclosure dispute resolution program
4 under part V.

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

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

17 "**§667-10 Power unaffected by transfer; surplus after sale.**

18 No sale or transfer by the mortgagor shall impair or annul any
19 right or power of attorney given in the mortgage to the
20 mortgagee to sell or transfer the mortgaged property, as
21 attorney or agent of the mortgagor, except as otherwise provided
22 by chapters 501 and 502. When public sale is made of the

1 mortgaged property under this part, distribution of the proceeds
 2 of the sale shall be as specified in section 667-3, and the
 3 remainder of the proceeds, if any, shall be paid over to the
 4 owner of the mortgaged property, after deducting the amount of
 5 ~~[claim]~~ all claims and all expenses attending the same."

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

8 "~~§667-21 [Alternate power]~~ Power of sale process [~~+~~
 9 ~~definitions.~~—(a)]. The power of sale process in this part is
 10 an alternative [~~power of sale process~~] to the foreclosure by
 11 action [~~and the foreclosure by power of sale~~] in part [~~+~~] IA.

12 [~~(b) As used in this part:~~

13 "~~Approved budget and credit counselor~~" means a budget and
 14 credit counseling agency that has received approval from a
 15 United States trustee or bankruptcy administrator to provide
 16 instructional courses concerning personal financial management
 17 pursuant to Title 11 United States Code, section 111.

18 "~~Approved housing counselor~~" means a housing counseling
 19 agency that has received approval from the United States
 20 Department of Housing and Urban Development to provide housing
 21 counseling services pursuant to section 106(a)(2) of the Housing



1 ~~and Urban Development Act of 1968, Title 12 United States Code,~~
2 ~~section 1701x.~~

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

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

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

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

- 19 ~~(1) The foreclosing mortgagee;~~
20 ~~(2) Any person that has an ownership interest in the~~
21 ~~promissory note on the mortgage agreement or a~~



1 ~~security interest represented by the mortgage for the~~
2 ~~subject property;~~

3 ~~(3) Any mortgage servicer, who services the mortgage loan~~
4 ~~of the mortgagor; and~~

5 ~~(4) The agents, employees, trustees, and representatives~~
6 ~~of a lender, the foreclosing mortgagee, a mortgagee,~~
7 ~~and a mortgage servicer.~~

8 ~~"Mailed" means to be sent by regular mail, postage prepaid,~~
9 ~~and by certified, registered, or express mail, postage prepaid~~
10 ~~and return receipt requested.~~

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

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

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

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



1 ~~"Mortgager" means the mortgager 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 ~~"Nonjudicial foreclosure" means foreclosure under power of~~
6 ~~sale.~~

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

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

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

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

19 ~~"Power of sale" or "power of sale foreclosure" means a~~
20 ~~nonjudicial foreclosure under this part when the mortgage~~
21 ~~contains, authorizes, permits, or provides for a power of sale,~~



1 ~~a power of sale foreclosure, a power of sale remedy, or a~~
2 ~~nonjudicial foreclosure.~~

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

8 ~~"Record" or "recorded" means a document is recorded or~~
9 ~~filed with the office of the assistant registrar of the land~~
10 ~~court under chapter 501 or recorded with the registrar of~~
11 ~~conveyances under chapter 502, or both, as applicable.~~

12 ~~"Residential property" means real property that is improved~~
13 ~~and used for residential purposes.~~

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

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

20 **"[+]§667-21.5[+] Foreclosure notice; planned communities;**
21 **condominiums; cooperative housing projects.** Notwithstanding any
22 law or agreement to the contrary, any person who forecloses on a



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

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

10 (2) Any election by an owner-occupant of the property that
11 is the subject of the foreclosure to participate in
12 the mortgage foreclosure dispute resolution program
13 under part V.

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



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

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

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

6 "(a) When the mortgagor or the borrower has breached the
7 mortgage agreement, and when the foreclosing mortgagee intends
8 to conduct a power of sale foreclosure under this part, the
9 foreclosing mortgagee shall prepare a written notice of default
10 and intention to foreclose addressed to the mortgagor, the
11 borrower, and any guarantor. The notice of default and
12 intention to foreclose shall state:

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

14 (2) The name and last known address of ~~[all]~~ the
15 mortgagors, the borrowers, and any guarantors;

16 (3) ~~[The]~~ With respect to the mortgaged property, the
17 address or a description of ~~[the]~~ its location ~~[of the~~
18 ~~mortgaged property, the]~~, tax map key number, and
19 ~~[the]~~ certificate of title or transfer certificate of
20 title number if ~~[within the jurisdiction of]~~
21 registered in the land court ~~[, of the mortgaged~~
22 ~~property]~~;



- 1 (4) The description of the default or, if the default is a
2 monetary default, an itemization of the delinquent
3 amount;
- 4 (5) The action required to cure the default, including the
5 delinquent amount and the estimated amount of the
6 foreclosing mortgagee's attorney's fees and costs, and
7 all other fees and costs related to the default
8 estimated to be incurred by the foreclosing mortgagee
9 by the deadline date;
- 10 (6) The date by which the default must be cured, which
11 shall be at least sixty days after the date of the
12 notice of default and intention to foreclose;
- 13 (7) A statement that if the default is not cured by the
14 deadline date stated in the notice of default and
15 intention to foreclose, the entire unpaid balance of
16 the moneys owed to the mortgagee under the mortgage
17 agreement will become due, that the mortgagee intends
18 to conduct a power of sale foreclosure to sell the
19 mortgaged property at a public sale without any court
20 action and without going to court, and that the
21 mortgagee or any other person may acquire the
22 mortgaged property at the public sale;

1 (8) 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 mortgagee may publish the
 4 public notice of the public sale on a website
 5 maintained by the department, pursuant to section 667-
 6 27(d)(2);

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

12 [~~9~~] (10) Notice of the right of the owner-occupant to
 13 elect to participate in any other process as
 14 established by law.

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 LOAN CONTINUES AFTER THE
 20 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY
 21 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
 22 AND WITHOUT GOING TO COURT.

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

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

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

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

21 ~~EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO~~
22 ~~ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE~~



1 ~~PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO~~
2 ~~ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD~~
3 ~~WITHOUT ANY OPEN HOUSES BEING HELD.]~~

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

13 "(d) The notice of default and intention to foreclose
14 shall also include contact information for [~~local~~] approved
15 housing counselors and approved budget and credit counselors.

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

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

22 (2) Any prior or junior creditors who have a recorded lien



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

4 (3) The state director of taxation;

5 (4) The director of finance of the county where the
6 mortgaged property is located;

7 (5) The department of commerce and consumer affairs, by
8 filing the notice with the department when required;
9 and

10 (6) Any other person entitled to receive notice under this
11 part."

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

14 "**§667-24 Cure of default.** (a) If the default is cured as
15 required by the notice of default and intention to foreclose, or
16 if the parties have reached [~~a settlement document,~~] an
17 agreement to resolve the nonjudicial foreclosure, the
18 foreclosing mortgagee shall rescind the notice of default and
19 intention to foreclose. Within fourteen days of the date of the
20 cure or [~~a settlement document reached by the parties,~~] an
21 agreement to resolve the nonjudicial foreclosure, the
22 foreclosing mortgagee shall so notify any person who was served



1 with the notice of default and intention to foreclose. If the
2 notice of default and intention to foreclose was recorded, a
3 release of the notice of default and intention to foreclose
4 shall be recorded.

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

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

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

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



- 1 (2) At a state facility in Hilo, for a public sale of
2 mortgaged property located in the [~~eastern portion of~~
3 ~~the county of Hawaii;~~] districts of Hamakua, north
4 Hilo, south Hilo, or Puna;
- 5 (3) At a state facility in Kailua-Kona, for a public sale
6 of mortgaged property located in the [~~western portion~~
7 ~~of the county of Hawaii;~~] districts of north Kohala,
8 south Kohala, north Kona, south Kona, or Kau;
- 9 (4) At a state facility in the county seat of Maui, for a
10 public sale of mortgaged property located in the
11 county of Maui; and
- 12 (5) At a state facility in the county seat of Kauai, for a
13 public sale of mortgaged property located in the
14 county of Kauai;

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

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

- 22 1. By amending subsections (a) to read:



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

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

4 ~~[(2) The dates and times of the two open houses of the~~
5 ~~mortgaged property, or if there will not be any open~~
6 ~~houses, the public notice shall so state;~~

7 ~~+(3)]~~ (2) The unpaid balance of the moneys owed to the
8 mortgagee under the mortgage agreement;

9 ~~+(4)]~~ (3) A description of the mortgaged property,
10 including the address and the tax map key number of
11 the mortgaged property;

12 ~~+(5)]~~ (4) The name of the mortgagor and the borrower;

13 ~~+(6)]~~ (5) The name of the foreclosing mortgagee;

14 ~~+(7)]~~ (6) The name of any prior or junior creditors having
15 a recorded lien on the mortgaged property before the
16 recordation of the notice of default and intention to
17 foreclose under section 667-23;

18 ~~+(8)]~~ (7) The name, the address in the State, and the
19 telephone number in the State of the person in the
20 State conducting the public sale; and

21 ~~+(9)]~~ (8) The terms and conditions of the public sale~~;~~ and

22 ~~+(10)]~~ An estimate of the opening bid]."



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

2 "(d) The foreclosing mortgagee shall have the public
3 notice of the public sale [~~printed~~]:

4 (1) Printed in not less than seven-point font and
5 published in the classified section of a [daily]
6 newspaper [~~having the largest~~] of general circulation
7 [specifically] in the [county where the mortgaged
8 property is located; provided that for property
9 located in a county with a population of more than one
10 hundred thousand but less than three hundred thousand,
11 the public notice shall be published in the newspaper
12 having the largest general circulation specifically in
13 the western or eastern half of the county, as the case
14 may be, in which the property is located.] real
15 property tax zone in which the mortgaged property is
16 located, as shown on the applicable county real
17 property tax maps kept by each respective county's
18 real property tax assessment division, except for the
19 county of Kalawao which shall be considered its own
20 geographic area for the purposes of this paragraph.
21 For the purposes of this paragraph, a newspaper is of
22 general circulation if the newspaper:

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

2 (B) Is distributed within the county where the
3 mortgaged property is located:

4 (i) At least weekly;

5 (ii) For a minimum of six months unless
6 interrupted by strike, natural disaster, or
7 act of war or terror; and

8 (iii) To a minimum of one per cent of the
9 residents of the county, as determined by
10 the last decennial United States census and
11 as verified by an independent audit.

12 A person may apply to the circuit court for an order
13 confirming a newspaper to be of general circulation
14 for purposes of this paragraph, which the court shall
15 grant upon proof of compliance with this paragraph.

16 The public notice shall be published once each week
17 for three consecutive weeks, constituting three
18 publications. The public sale shall take place no
19 sooner than fourteen days after the date of the
20 publication of the third public notice advertisement;

21 or



1 (2) Not less than twenty-eight days before the date of the
 2 public sale, published on a website maintained by the
 3 department; provided that the mortgaged property is
 4 owned by an owner-occupant."

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

7 "(a) The public sale may be either postponed or canceled
 8 by the foreclosing mortgagee. Notice of the postponement or the
 9 cancellation of the public sale shall be [announced]:

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

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

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

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

20 "(1) I am duly authorized to represent or act on behalf of
 21 _____ (name of mortgagee) ("foreclosing
 22 mortgagee") regarding the following power of sale



1 foreclosure. I am signing this affidavit in
2 accordance with the [alternate] power of sale
3 foreclosure law (Chapter 667, Part II, Hawaii Revised
4 Statutes);

5 (2) The foreclosing mortgagee is a [~~"foreclosing~~
6 ~~mortgagee"~~] mortgagee as defined in [~~the power of sale~~
7 ~~foreclosure law;~~] section 667-1, Hawaii Revised
8 Statutes, conducting a power of sale foreclosure;

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



1 is _____ ("borrower");

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

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

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

18 (C) The notice of default and intention to foreclose
19 was recorded before the deadline date in the
20 _____ (bureau of conveyances or
21 office of the assistant registrar of the land
22 court). The notice was recorded on

1 _____ (date) as document no.
2 _____ . A copy of the recorded
3 notice is attached as Exhibit "1";

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

6 (E) A public notice of the public sale was initially
7 published in the classified section of the
8 _____, [~~a daily newspaper of~~
9 ~~general circulation in the county where the~~
10 ~~mortgaged property is located,~~] in accordance
11 with section 667-27(d), Hawaii Revised Statutes,
12 once each week for three consecutive weeks on the
13 following dates: _____ . A copy

14 of the affidavit of publication for the last
15 public notice of the public sale is attached as
16 Exhibit "2". The date of the public sale was
17 _____ (date). The last
18 publication was not less than fourteen days
19 before the date of the public sale;

20 (F) The public notice of the public sale was sent to
21 the mortgagor, to the borrower, to the state
22 director of taxation, to the director of finance



1 of the county where the mortgaged property is
 2 located, and to the following:
 3 _____ . The public notice was sent
 4 on the following dates and in the following
 5 manner: _____. Those dates were
 6 after the deadline date in the notice of default
 7 and intention to foreclose, and those dates were
 8 at least sixty days before the date of the public
 9 sale;

10 (G) The public notice of the public sale was posted
 11 on the mortgaged property or on such other real
 12 property of which the mortgaged property is a
 13 part on _____ (date). That date
 14 was at least sixty days before the date of the
 15 public sale;

16 [~~(H)~~] ~~Two public showings (open houses) of the~~
 17 ~~mortgaged property were held (or were not held~~
 18 ~~because the mortgagor did not cooperate);~~

19 ~~(I)~~ (H) A public sale of the mortgaged property was
 20 held on a business day during business hours on:
 21 _____ (date), at
 22 _____ (time), at the following

1 location: _____. The highest
 2 successful bidder was _____ (name)
 3 with the highest successful bid price of
 4 \$ _____; and

5 [~~(F)~~] (I) At the time the public sale was held, the
 6 default was not cured and there was no circuit
 7 court foreclosure action pending in the circuit
 8 where the mortgaged property is located; and

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

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

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

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



1 "**§667-37 Judicial action of foreclosure before public**
2 **sale.** This part shall not prohibit [~~the borrower,~~] the
3 foreclosing mortgagee, or any other creditor having a recorded
4 lien on the mortgaged property before the recordation of the
5 notice of default under section 667-23, from filing an action
6 for the judicial foreclosure of the mortgaged property in the
7 circuit court of the circuit where the mortgaged property is
8 located~~[-]~~; provided that the action is filed before the public
9 sale is held. The power of sale foreclosure process shall be
10 stayed during the pendency of the circuit court foreclosure
11 action."

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

14 "**§667-41 Public information notice requirement.**
15 [~~Beginning on September 1, 2011, all~~] (a) All financial
16 institutions, mortgagees, lenders, business entities and
17 organizations without limitation, and persons, who intend to use
18 the power of sale foreclosure under this part, under the
19 conditions required by this part, shall [~~also develop~~
20 ~~informational materials to educate and inform borrowers and~~
21 ~~mortgagors. These materials shall be made available to the~~
22 ~~public and provided to the mortgagors of all mortgage agreements~~



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



1 business entities and persons who are authorized under this part
2 to enforce the foreclosure rights in a mortgage, in the event of
3 the borrower's default, have the option of pursuing either a
4 judicial or nonjudicial foreclosure in the manner provided by
5 law.

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

10 PUBLIC INFORMATION NOTICE PURSUANT TO
11 HAWAII REVISED STATUTES SECTION 667-41
12 WHAT IS FORECLOSURE?

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

17 The mortgage agreement or contract that you may
18 enter into states that in the event the amounts due
19 under the loan are not paid when they are due, or for
20 other reasons you do not perform your promises in the
21 note and mortgage, all of which are known as defaults,



1 the lender shall have the option to foreclose the
2 mortgage, which will result in a sale of your home.

3 The entity or person who holds your mortgage
4 ("Mortgagee") may send you a notice informing you that
5 the Mortgagee is starting foreclosure proceedings.
6 You should not wait for that to happen; take steps to
7 prevent a foreclosure as soon as you are having
8 trouble paying your mortgage. You should contact your
9 lender or your lender's loan servicer, or you may
10 contact a budget and credit counselor or housing
11 counselor, to discuss your situation.

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

20 STEP TWO: PROCEEDING TO FORECLOSURE. If you do
21 not pay the required amount past due by the deadline
22 in the notice of default, the Mortgagee may elect to



1 proceed to collect the balance due on your loan
2 through foreclosure. In Hawaii, there are two types
3 of foreclosures: judicial and nonjudicial.

4 In a JUDICIAL FORECLOSURE, the Mortgagee files a
5 lawsuit against you in order to obtain a court
6 judgment that you owe the balance due under your loan
7 and to obtain an order to sell the property. The
8 initial legal document you will receive in the lawsuit
9 is called the complaint. You should consult an
10 attorney of your choice who can advise you as to the
11 steps needed to protect your rights. Judicial
12 foreclosure involves the sale of the mortgaged
13 property under the supervision of the court. You will
14 receive notice of the foreclosure case hearings and
15 the sale date and the judicial decision is announced
16 after a hearing in court. The sale of the property
17 must be approved by the court before it can be
18 completed.

19 In a NONJUDICIAL FORECLOSURE, the process follows
20 the procedures spelled out in Chapter 667 of the
21 Hawaii Revised Statutes and in your mortgage. The
22 nonjudicial procedures allow a Mortgagee to foreclose



1 on and sell the property identified in the mortgage
2 without filing a lawsuit or court supervision. This
3 nonjudicial foreclosure is also called a power of sale
4 foreclosure. The Mortgagee starts the process by
5 giving you a written notice of default and of the
6 Mortgagee's intent to sell the property.

7 After the required time has elapsed, you will be
8 sent a notice of nonjudicial foreclosure sale, which
9 will tell you the date and location of the sale.

10 In a NONJUDICIAL foreclosure, if you own an
11 interest in the property you may have the right to
12 participate in the Mortgage Foreclosure Dispute
13 Resolution Program or to convert the nonjudicial
14 foreclosure into a judicial foreclosure. The
15 nonjudicial foreclosure may not proceed during the
16 dispute resolution process or after it has been
17 converted to a judicial foreclosure.

18 PLEASE NOTE: Even if a judicial or nonjudicial
19 foreclosure has commenced, you may be able to
20 reinstate the loan and keep your home if you pay the
21 delinquent amount then due and the foreclosure
22 expenses that your Mortgagee has incurred. You must



1 contact the Mortgagee as soon as possible to determine
2 whether reinstatement is possible.

3 STEP THREE: PUBLIC SALE. The sale of a
4 foreclosed home is usually made through a public
5 auction, where the highest bidder who can make a cash
6 deposit of up to 10% of the bid can buy the property.
7 In a judicial foreclosure, the court appoints a third
8 party commissioner to advertise and conduct the sale.
9 In a nonjudicial foreclosure, the Mortgagee advertises
10 and conducts the sale. In both types of sales, the
11 Mortgagee has the right to buy the property by
12 submitting a credit bid based upon the balance owed on
13 the mortgage, so long as its bid is higher than any
14 other bids. If the Mortgagee buys the property, the
15 Mortgagee has the right to re-sell it in a private
16 sale at a later date.

17 STEP FOUR: DISBURSEMENT OF PROCEEDS; POTENTIAL
18 DEFICIENCY JUDGMENT. After the foreclosure sale is
19 completed, the proceeds are paid out to lien holders,
20 including the Mortgagee, in the order set by law and
21 lastly to you if there are any proceeds left.



1 In a JUDICIAL FORECLOSURE, the court tells the
2 commissioner whom to pay and how much. If the
3 property did not sell for enough to pay off the
4 balance due under your loan, the Mortgagee has the
5 right to ask the court for a deficiency judgment
6 against you for the difference.

7 In a NONJUDICIAL FORECLOSURE, the Mortgagee
8 distributes the proceeds from the sale. Unless the
9 debt is secured by other collateral, or except as
10 otherwise provided by the law, the recordation of both
11 the conveyance document and affidavit shall operate as
12 full satisfaction of the debt.

13 READ THE NOTE AND MORTGAGE CAREFULLY TO
14 UNDERSTAND WHAT IS REQUIRED AND HOW TO AVOID
15 FORECLOSURE, AND CONSULT WITH AN ATTORNEY REGARDING
16 YOUR LEGAL RIGHTS.

17 (c) The requirements of this section shall apply only to
18 written loan applications submitted, or to loans where
19 residential property is required to be used as security, after
20 August 31, 2012."

21 SECTION 26. Section 667-53, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~+~~§667-53~~+~~ Conversion to judicial foreclosure;
2 residential property; conditions. (a) An owner-occupant of a
3 residential property that is subject to nonjudicial foreclosure
4 under part ~~I-0F~~ II may convert the action to a judicial
5 foreclosure provided that:

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

12 (A) The foreclosure notice is served on the owner-
13 occupant, as required by section ~~667-5-0F~~ 667-
14 22; or

15 (B) The conclusion of a mortgage foreclosure dispute
16 resolution process conducted under part V,
17 pursuant to section 667-80(f), if applicable;

18 (2) Within forty-five days of the filing of the petition,
19 all owner-occupants and mortgagors of an interest in
20 the residential property whose interests are pledged
21 or otherwise encumbered by the mortgage that is being
22 foreclosed and all persons who have signed the



1 promissory note or other instrument evidencing the
2 debt secured by the mortgage that is being foreclosed,
3 including without limitation co-obligors and
4 guarantors, shall file a statement in the circuit
5 court action that they agree to submit themselves to
6 the judicial process and the jurisdiction of the
7 circuit court; provided further that if this condition
8 is not satisfied, the circuit court action may be
9 dismissed with prejudice as to the right of any owner-
10 occupant to convert the action to a judicial
11 proceeding, and the mortgagee may proceed
12 nonjudicially;

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

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

22 (5) All parties joined in the converted judicial



1 proceeding may assert therein any claims and defenses
2 that they could have asserted had the action
3 originally been commenced as a judicial foreclosure
4 action; and

5 (6) [~~Notwithstanding chapter 607, the~~] The fee for filing
6 the petition shall be [~~not more than \$525, of which~~]
7 \$250, which shall be deposited into the mortgage
8 foreclosure dispute resolution special fund
9 established under section 667-86[~~; provided that if~~
10 ~~the mortgage foreclosure dispute resolution program~~
11 ~~under part V has not yet been implemented, the filing~~
12 ~~fee shall be not more than \$300].~~

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

16 [~~(c) This section shall not apply to a foreclosure for~~
17 ~~which the mortgagor has elected to participate in the mortgage~~
18 ~~foreclosure dispute resolution program pursuant to part V.~~

19 ~~(d)]~~ (c) The judiciary may create and adopt a form for a
20 conversion petition."

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



1 "[+](a)[+] A petition filed pursuant to section 667-53
2 shall contain at a minimum:

3 (1) A caption setting forth the name of the court, the
4 title of the action, and the file number; provided
5 that the title of the action shall include the names
6 of the filing party as petitioner and the foreclosing
7 party as the respondent;

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

10 (3) The address or tax map key number, and the certificate
11 of title or transfer certificate of title number if
12 [~~within the land court's jurisdiction,~~] registered in
13 the land court, of the property subject to the
14 foreclosure action;

15 (4) A statement identifying all other owner-occupants and
16 mortgagors of the property whose interests are pledged
17 or otherwise encumbered by the mortgage that is being
18 foreclosed and all persons who have signed the
19 promissory note or other instrument evidencing the
20 debt secured by the mortgage that is being foreclosed,
21 including without limitation co-obligors and
22 guarantors;



1 (5) A certification under penalty of perjury that the
2 filing party is an owner-occupant of the subject
3 property and seeks to convert the nonjudicial
4 foreclosure to a judicial proceeding;

5 (6) A statement certifying that the filing party served a
6 copy of the petition on the attorney identified in the
7 foreclosure notice under section [~~667-5-0x~~] 667-22
8 either by personal delivery at, or by postage prepaid
9 United States mail to, the address of the attorney as
10 set forth in the foreclosure notice under section
11 [~~667-5-0x~~] 667-22; and

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

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

18 "[~~+~~]**§667-55[+]** **Notice of default and intention to**
19 **foreclose; residential property; required statement on**
20 **conversion.** (a) The foreclosure notice that is served as
21 required under section [~~667-5-0x~~] 667-22 shall include, in
22 addition to the contents required under section [~~667-5-0x~~] 667-



1 22, a statement printed in not less than fourteen-point font as
2 follows:

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



1 STATUTES.

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

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

21 MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE
22 AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN



1 ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID
2 FORECLOSURE OR TO MITIGATE THE EFFECTS OF
3 FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF [AN
4 ~~OWNER-OCCUPANT FILES FOR CONVERSION,~~] THE
5 NONJUDICIAL FORECLOSURE IS CONVERTED TO A JUDICIAL
6 FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT
7 THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

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

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



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

3 "[+]§667-56[+] **Prohibited conduct.** It shall be a
4 prohibited practice for any foreclosing mortgagee to engage in
5 any of the following practices:

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

9 (2) Specifying a fictitious place in the public notice of
10 the public sale;

11 (3) Conducting a postponed public sale on a date other
12 than the date described in the new public notice of
13 the public sale;

14 (4) Delaying the delivery of the recorded, conformed copy
15 of the conveyance document to a bona fide purchaser
16 who purchases in good faith for more than [~~forty-five~~]
17 sixty days after the completion of the public sale;

18 (5) Completing nonjudicial foreclosure proceedings during
19 short sale escrows with a bona fide purchaser if the
20 short sale offer is at least [~~five~~] ten per cent
21 greater than the public sale price; provided that
22 escrow is opened within ten days and closed within



- 1 forty-five days of the public sale; and provided
2 further that a bona fide short sale purchaser shall
3 have priority over any other purchaser;
- 4 (6) Completing nonjudicial foreclosure proceedings [~~during~~
5 ~~bona fide loan modification negotiations with the~~
6 ~~mortgagor;~~] before the foreclosing mortgagee delivers
7 a written notice of the denial of the mortgagor's
8 application for a loan modification, unless the
9 mortgagor is applying for a loan modification of the
10 same mortgage with the same foreclosing mortgagee for
11 more than the third time; or
- 12 (7) Completing nonjudicial foreclosure proceedings against
13 a mortgagor who has been accepted or is being
14 evaluated for consideration for entry into [a] any
15 federal loan modification program before obtaining a
16 certificate or other documentation confirming that the
17 mortgagor is no longer eligible for, or an active,
18 participant of, that federal program[-], unless the
19 mortgagor has been accepted or is being evaluated for
20 consideration for entry into the same federal loan
21 modification program for the same mortgage for more
22 than the third time."



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

3 "[+]§667-57[+] **Suspension of foreclosure actions by junior**
4 **lienholders.** (a) Upon initiation of a foreclosure action
5 pursuant to part [±] IA or part II by a foreclosing mortgagee
6 [~~as defined in section 667-21(b)~~], no junior lienholder shall be
7 permitted to initiate or continue a nonjudicial foreclosure
8 pursuant to part [±] II until the foreclosure initiated by the
9 foreclosing mortgagee has been concluded by a judgment issued by
10 a court pursuant to section [~~667-17~~] 667-1.5, the recording of
11 an affidavit after public sale pursuant to section [~~667-5 or~~]
12 667-33, or the filing of [~~a settlement document~~] an agreement
13 under the mortgage foreclosure dispute resolution provisions of
14 section 667-81.

15 (b) Upon initiation of a foreclosure action pursuant to
16 part [±] IA or part II by a foreclosing mortgagee [~~as defined in~~
17 ~~section 667-21(b)~~], no junior lienholder shall be permitted to
18 initiate a nonjudicial foreclosure pursuant to part II during
19 the pendency of a stay pursuant to section 667-83; provided that
20 a junior lienholder may initiate or continue with a nonjudicial
21 foreclosure pursuant to part II if [~~the~~]:



- 1 (1) The junior lien foreclosure was initiated before the
- 2 foreclosure action by the foreclosing mortgagee[-]; or
- 3 (2) The junior lienholder is an association and has not
- 4 been provided notice of the foreclosure action,
- 5 pursuant to section 667-21.5, or has not received
- 6 written notification of a case opening pursuant to
- 7 section 667-79."

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

10 "[+]§667-58[+] **Valid notice[-]; affiliate statement.** (a)

11 Any notices made pursuant to this chapter may be issued only by
 12 persons authorized by a foreclosing mortgagee or lender pursuant
 13 to an affiliate statement signed by that foreclosing mortgagee
 14 or lender and recorded at the bureau of conveyances identifying
 15 the agency or affiliate relationship and the authority granted
 16 or conferred to that agent or representative.

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

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



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

10 (d) No attorney of a mortgage servicer, foreclosing
 11 mortgagee, or lender shall be required to be included in any
 12 affiliate statement of a foreclosing mortgagee or lender. No
 13 notice or other correspondence made by any attorney for the
 14 foreclosing mortgagee or lender shall be required to reference
 15 any affiliate statement made by the foreclosing mortgagee or
 16 lender. Any notice or other correspondence made by any attorney
 17 for a mortgage servicer shall reference, in accordance with
 18 subsection (b), the appropriate affiliate statement of the
 19 foreclosing mortgagee or lender authorizing the mortgage
 20 servicer to act."

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



1 "~~[+]§667-59[+]~~ **Actions and communications with the**
2 **mortgagor in connection with a foreclosure.** A foreclosing
3 mortgagee shall be bound by all agreements, obligations,
4 representations, or inducements made on its behalf by its
5 agents, including but not limited to its employees,
6 representatives, mortgage servicers, or persons authorized by a
7 foreclosing mortgagee or lender pursuant to an affiliate
8 statement recorded in the bureau of conveyances pursuant to
9 section 667-58.

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

12 SECTION 33. Section 667-60, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~[+]§667-60[+]~~ **Unfair or deceptive act or practice[-];**

15 **transfer of title.** (a) Any foreclosing mortgagee who
16 ~~[violates]~~ engages in any of the following violations of this
17 chapter shall have committed an unfair or deceptive act or
18 practice under section 480-2[-]:

19 (1) Failing to provide a borrower or mortgagor with, or
20 failing to serve as required, the information required
21 by section 667-22 or 667-55;



- 1 (D) Completing a nonjudicial foreclosure if a
- 2 neutral's closing report under section 667-82
- 3 indicates that the foreclosing mortgagee failed
- 4 to comply with requirements of the mortgage
- 5 foreclosure dispute resolution program;
- 6 (9) Completing a nonjudicial foreclosure while a stay is
- 7 in effect under section 667-83;
- 8 (10) Failing to distribute sale proceeds as required by
- 9 section 667-31;
- 10 (11) Making any false statement in the affidavit of public
- 11 sale required by section 667-32;
- 12 (12) Attempting to collect a deficiency in violation of
- 13 section 667-38; and
- 14 (13) Failing to file a foreclosure notice with the
- 15 department as required by section 667-76(a).
- 16 (b) Notwithstanding subsection (a), the transfer of title
- 17 to the purchaser of the property as a result of a foreclosure
- 18 under this chapter shall only be subject to avoidance under
- 19 section 480-12 for violations described in subsection (a)(1) to
- 20 (9) if such violations are shown to be substantial and material;
- 21 provided that a foreclosure sale shall not be subject to



1 avoidance under section 480-12 for violation of section 667-
2 56(5).

3 (c) Any action to void the transfer of title to the
4 purchaser of property under this chapter shall be filed in the
5 circuit court of the circuit within which the foreclosed
6 property is situated no later than one hundred eighty days
7 following the recording of the affidavit required by section
8 667-32. If no such action is filed within the one hundred
9 eighty-day period, then title to the property shall be deemed
10 conclusively vested in the purchaser free and clear of any claim
11 by the mortgagor or anyone claiming by, through, or under the
12 mortgagor."

13 SECTION 34. Section 667-63, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) A mortgage creditor having a mortgage lien on a time
16 share interest who desires notice that another mortgage creditor
17 having a mortgage lien on the time share interest intends to
18 foreclose and sell the mortgaged time share interest, pursuant
19 to the power of sale under section 667-62, may submit a written
20 request to the mortgagee who is foreclosing or who may foreclose
21 the mortgage by power of sale, asking to receive notice of the



1 mortgagee's intention to foreclose the mortgage under section
2 667-62. The request for notice:

3 (1) May be submitted any time after the recordation [~~or~~
4 ~~filing~~] of the subject mortgage [~~at the bureau of~~
5 ~~conveyances or the land court, but shall be~~]; provided
6 that the request is submitted prior to completion of
7 publication of notice of the intention to foreclose
8 the mortgage and of the sale of the mortgaged time
9 share interest;

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

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

14 SECTION 35. Section 667-71, Hawaii Revised Statutes, is
15 amended by amending subsections (a) and (b) to read as follows:

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

20 (b) This part shall not apply to actions by an association
21 to foreclose on a lien for amounts owed to the association that
22 arise under a declaration filed pursuant to chapter 421J, 514A,



1 or 514B, or to a mortgagor who has previously participated in
2 dispute resolution under this part for the same property on the
3 same mortgage loan."

4 SECTION 36. Section 667-73, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) The department is authorized to contract with county,
7 state, or federal agencies, and with private organizations,
8 approved housing counselors, and approved budget and credit
9 counselors for the performance of any of the functions of this
10 part. These contracts shall not be subject to chapter 103D or
11 103F."

12 SECTION 37. Section 667-74, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§667-74[+] **Availability of dispute resolution required**
15 **before foreclosure.** Before a public sale may be conducted
16 pursuant to section [~~667-5 or~~] 667-25 for a residential property
17 that is occupied by an owner-occupant [~~as a primary residence~~],
18 the foreclosing mortgagee [~~shall~~], at the election of the owner-
19 occupant, shall participate in the mortgage foreclosure dispute
20 resolution program under this part to attempt to negotiate an
21 agreement that avoids foreclosure or mitigates damages in cases
22 where foreclosure is unavoidable."



1 SECTION 38. Section 667-75, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§667-75[+] **Notice of dispute resolution availability**
4 **required.** (a) A foreclosure notice served pursuant to section
5 [~~667-5-07~~] 667-22(e) shall include notice that the mortgagee is
6 required, at the election of an owner-occupant, to participate
7 in the mortgage foreclosure dispute resolution program pursuant
8 to this part to attempt to avoid foreclosure or to mitigate
9 damages where foreclosure is unavoidable.

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

12 (1) The name and contact information of the mortgagor and
13 the mortgagee;

14 (2) The subject property address and legal description,
15 including tax map key number and the certificate of
16 title or transfer certificate of title number if
17 [~~within the land court's jurisdiction;~~] registered in
18 the land court;

19 (3) The name and contact information of a person or entity
20 authorized to negotiate a loan modification on behalf
21 of the mortgagee;

22 (4) A statement that the mortgagor shall consult with an



- 1 approved housing counselor or an approved budget and
2 credit counselor at least thirty days prior to the
3 first day of a scheduled dispute resolution session;
- 4 (5) Contact information for all [~~local~~] approved housing
5 counselors;
- 6 (6) Contact information for all [~~local~~] approved budget
7 and credit counselors;
- 8 (7) A statement that the mortgagor electing to participate
9 in the mortgage foreclosure dispute resolution program
10 shall provide a certification under penalty of perjury
11 to the department that the mortgagor is an owner-
12 occupant of the subject property, including supporting
13 documentation;
- 14 (8) A general description of the information that an
15 owner-occupant electing to participate in the mortgage
16 foreclosure dispute resolution program is required to
17 provide to participate in the program as described
18 under section 667-80(c)(2);
- 19 (9) A statement that the owner-occupant shall elect to
20 participate in the mortgage foreclosure dispute
21 resolution program pursuant to this part no later than



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

3 SECTION 39. Section 667-76, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~+~~§667-76~~+~~ **Mortgagee's filing of notice with**
6 **department; filing fee.** (a) Within three days after a
7 mortgagee serves a foreclosure notice on an owner-occupant
8 pursuant to section ~~[667-5 or]~~ 667-22, the mortgagee shall file
9 the foreclosure notice with the department and pay a filing fee
10 of \$250, which shall be deposited into the mortgage foreclosure
11 dispute resolution special fund established under section 667-
12 86.

13 (b) ~~[Violation of this section shall constitute an unfair~~
14 ~~and deceptive act or practice subject to section 480-2.]~~ A
15 mortgagee who elects to publish a public notice of public sale
16 electronically pursuant to section 667-27(d)(2) or 667-F(d)(2)
17 shall publish the notice by filing the same with the department
18 and paying a filing fee of \$ _____, which shall be deposited
19 into the mortgage foreclosure dispute resolution special fund
20 established under section 667-86."

21 SECTION 40. Section 667-77, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[+]§667-77[+] Notification to mortgagor by department.

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

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



- 1 description of acceptable supporting documentation as
2 required by section 667-78(a)(2);
- 3 (4) A statement that the owner-occupant shall elect to
4 participate in the mortgage foreclosure dispute
5 resolution program pursuant to this part no later than
6 thirty days after the department's mailing of the
7 notice or the owner-occupant shall be deemed to have
8 waived the option to participate in the mortgage
9 foreclosure dispute resolution program;
- 10 (5) A description of the information required under
11 section 667-80(c)(2) that the owner-occupant shall
12 provide to the mortgagee and the neutral assigned to
13 the dispute resolution;
- 14 (6) A statement that the owner-occupant shall consult with
15 an approved housing counselor or approved budget and
16 credit counselor at least thirty days prior to the
17 first day of a scheduled dispute resolution session;
- 18 (7) Contact information for all [~~local~~] approved housing
19 counselors;
- 20 (8) Contact information for all [~~local~~] approved budget
21 and credit counselors; and
- 22 (9) Contact information for the department.



1 The notification shall be mailed to the subject property address
2 and any other addresses for the mortgagor as provided in the
3 mortgagee's notice of dispute resolution under [+]section[+]
4 667-75 and the foreclosure notice under section [~~667-5-01~~] 667-
5 22(a)."

6 SECTION 41. Section 667-78, Hawaii Revised Statutes, is
7 amended as follows:

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

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

12 (1) The completed program election form provided
13 [~~pursuant~~]:

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

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

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

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



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

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

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

14 SECTION 42. Section 667-79, Hawaii Revised Statutes, is
15 amended as follows:

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

17 "(a) If an owner-occupant elects to participate in the
18 mortgage foreclosure dispute resolution program, the department
19 shall open a dispute resolution case. Within twenty days of
20 receipt of the owner-occupant's election form and fee in
21 accordance with section 667-78, the department shall mail
22 written notification of the case opening to the parties and, if



1 applicable, the condominium or other homeowner association of
2 the project where the owner-occupant's property is located, by
3 registered mail, return receipt requested, which shall include:

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

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

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

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

20 SECTION 43. Section 667-80, Hawaii Revised Statutes, is
21 amended as follows:

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



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

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

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

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

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

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



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

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

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

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

15 (2) The owner-occupant shall provide to the department and
16 the mortgagee:

17 (A) Documentation showing income qualification for a
18 loan modification, including any copies of pay
19 stubs, W-2 forms, social security or disability
20 income, retirement income, child support income,
21 or any other income that the owner-occupant deems
22 relevant to the owner-occupant's financial



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

19 SECTION 44. Section 667-81, Hawaii Revised Statutes, is
 20 amended by amending subsections (b), (c), and (d) to read as
 21 follows:

22 "(b) If, despite the parties' participation in the dispute



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

17 (c) If the parties have complied with the requirements of
18 this part and have reached an agreement, the agreement shall be
19 memorialized in [~~a settlement document~~] writing and signed by
20 the parties or their authorized representatives. [~~If the~~
21 ~~parties or their authorized representatives participate in the~~
22 ~~dispute resolution session in person, the settlement document~~



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



1 may record a notice of sale or other conveyance document, as
2 appropriate.

3 (d) If the parties to a dispute resolution process reach
4 an agreement which resolves the matters at issue in the dispute
5 resolution before the first day of the scheduled dispute
6 resolution session scheduled pursuant to this section, the
7 parties shall notify the neutral by that date. The neutral
8 shall thereafter issue a closing report that the parties have
9 reached an agreement prior to the commencement of a dispute
10 resolution session. If the agreement provides for foreclosure,
11 the parties shall memorialize the agreement in [a] writing,
12 which shall be signed by both parties [~~and provided to the~~
13 ~~neutral. Any agreement authorizing foreclosure shall be~~
14 ~~attached to the neutral's closing report~~]. The parties may
15 [~~file or~~] record the report [~~at the bureau of conveyances or the~~
16 ~~land court, as appropriate~~]. If the agreement authorizes
17 foreclosure, the stay of the foreclosure under section 667-83
18 shall be released upon [~~filing or recording with the land court~~
19 ~~or bureau of conveyances, as appropriate.~~] the recordation of
20 the report. Thereafter, the land court or bureau of conveyances
21 may record a notice of sale or other conveyance document, as
22 appropriate. No fees shall be refunded if the parties come to



1 an agreement prior to a dispute resolution session conducted
2 pursuant to this part."

3 SECTION 45. Section 667-82, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The neutral's closing report shall indicate if the
6 mortgagee or the owner-occupant failed to comply with
7 requirements of the mortgage foreclosure dispute resolution
8 program.

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

11 (A) Participation in dispute resolution without the
12 authority to negotiate a loan modification or
13 without access at all stages of the dispute
14 resolution process to a person who is so
15 authorized;

16 (B) Failure to provide the required information or
17 documents;

18 (C) Refusal to cooperate or participate in dispute
19 resolution; or

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

22 (2) In the case of the owner-occupant, failure to comply



1 with the requirements of the program may consist of:

2 (A) Failure to provide the required information or
3 documents; or

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

6 provided that failure by the mortgagee and the owner-
7 occupant to reach an agreement to resolve the dispute
8 shall not constitute failure by the mortgagee or the
9 owner-occupant to comply with the requirements of the
10 mortgage foreclosure dispute resolution program."

11 SECTION 46. Section 667-83, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The written notification of a case opening under
14 section 667-79 shall operate as a stay of the foreclosure
15 proceeding[~~-~~] and may be [~~filed or~~] recorded[~~, as appropriate,~~
16 ~~at the land court or bureau of conveyances.~~]; provided that:

17 (1) The written notification shall not act as a stay on a
18 foreclosure proceeding by an association unless the
19 association has been provided notice pursuant to
20 sections 667-5.5, 667-21.5, or 667-79; and

21 (2) The written notification shall not act as a stay on a
22 foreclosure proceeding for the purpose of the date by



reenacted in the form in which they read on the day
before the effective date of this Act;

~~(3)~~ (2) Section 10 shall take effect on July 1, 2012~~[*]~~.

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

~~(5) Section 7 shall be repealed on September 30, 2014, and~~

~~section 26-9(o), Hawaii Revised Statutes, shall be~~

~~reenacted in the form in which it read on the day~~

~~before the effective date of this Act; and~~

~~(6) Upon the repeal of section 1, all moneys remaining in~~

~~the mortgage foreclosure dispute resolution special~~

~~fund established under section 667-P, Hawaii Revised~~

~~Statutes, shall be transferred to the compliance~~

~~resolution fund established under section 26-9(o),~~

~~Hawaii Revised Statutes.] "~~

PART V

SECTION 49. Section 667-5, Hawaii Revised Statutes, is
repealed.

~~"§667-5 Foreclosure under power of sale; notice;
affidavit after sale; deficiency judgments. (a) When a power
of sale is contained in a mortgage, and where the mortgagee, the
mortgagee's successor in interest, or any person authorized by
the power to act in the premises, desires to foreclose under~~



1 ~~power of sale upon breach of a condition of the mortgage, the~~
2 ~~mortgagee, successor, or person shall be represented by an~~
3 ~~attorney who is licensed to practice law in the State and is~~
4 ~~physically located in the State. The attorney shall:~~

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

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

19 ~~(i) The unit owner at the address shown in the~~
20 ~~records of the association and, if~~
21 ~~different, at the address of the unit being~~
22 ~~foreclosed; and~~



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

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

17 ~~(2) Give notice of the mortgagor's right to elect to~~
18 ~~participate in the mortgage foreclosure dispute~~
19 ~~resolution program pursuant to section 667-75 or to~~
20 ~~convert the nonjudicial power of sale foreclosure to a~~
21 ~~judicial foreclosure pursuant to section 667-53; and~~

22 ~~(3) Give any notices and do all acts as authorized or~~



1 ~~required by the power contained in the mortgage.~~

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

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

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

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

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

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

20 ~~(d) Any sale, of which notice has been given pursuant to~~
21 ~~subsections (a) and (b) may be postponed from time to time by~~
22 ~~public announcement made by the mortgagee or by a person acting~~



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

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

19 ~~Nothing in this section shall prohibit any other mortgagee~~
 20 ~~or person who holds a lien on the residential property subject to~~
 21 ~~the nonjudicial foreclosure, whose lien is subordinate to the~~
 22 ~~mortgage being foreclosed and is extinguished by the nonjudicial~~



1 ~~foreclosure sale, from pursuing a monetary judgment against an~~
2 ~~owner-occupant.~~

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

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

9 SECTION 50. Section 667-5.7, Hawaii Revised Statutes, is
10 repealed.

11 ~~["§667-5.7] Public sale. At any public sale pursuant to~~
12 ~~section 667-5, the successful bidder at the public sale, as the~~
13 ~~purchaser, shall not be required to make a downpayment to the~~
14 ~~foreclosing mortgagee of more than ten per cent of the highest~~
15 ~~successful bid price."]~~

16 SECTION 51. Section 667-6, Hawaii Revised Statutes, is
17 repealed.

18 ~~["§667-6 Notice to mortgage creditors. Whenever a~~
19 ~~mortgage creditor having a mortgage lien on certain premises~~
20 ~~desires notice that another mortgage creditor having a mortgage~~
21 ~~lien on the same premises intends to foreclose the mortgage and~~
22 ~~sell the mortgaged property pursuant to a power of sale under~~



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

19 ~~No request for copy of any notice pursuant to this section~~
20 ~~nor any statement or allegation in any such request nor any~~
21 ~~record thereof shall affect the title to real property or be~~
22 ~~deemed notice to any person that any party requesting copy of~~



1 ~~the notice has or claims any right, title, or interest in, or~~
2 ~~lien or charge upon the property described in the mortgage~~
3 ~~referred to therein."]~~

4 SECTION 52. Section 667-7, Hawaii Revised Statutes, is
5 repealed.

6 [~~§667-7 Notice, contents; affidavit.~~ (a) ~~The notice of~~
7 ~~intention of foreclosure shall contain:~~

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

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

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

15 SECTION 53. Section 667-8, Hawaii Revised Statutes, is
16 repealed.

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



1 ~~thereof, shall be admitted as evidence that the power of sale~~
2 ~~was duly executed."]~~

3 SECTION 54. Section 667-14, Hawaii Revised Statutes, is
4 repealed.

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

16 SECTION 55. Section 667-15, Hawaii Revised Statutes, is
17 repealed.

18 ~~"[~~§667-15~~ Location of public sale following power of~~
19 ~~sale foreclosure. The public sale of the mortgaged property~~
20 ~~shall be held only on grounds or at facilities under the~~
21 ~~administration of the State, as follows:~~

22 ~~(1) At the state capitol, for a public sale of mortgaged~~



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

19 SECTION 56. Section 667-21.6, Hawaii Revised Statutes, is
20 repealed.

21 ~~["§667-21.6] Foreclosure of association lien; cure of~~
22 ~~default. If a unit owner notifies the association or its~~



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

18 SECTION 57. Section 667-26, Hawaii Revised Statutes, is
19 repealed.

20 [~~§667-26 Public showing of mortgaged property. (a) If~~
21 ~~the default is not cured as stated in the notice of default and~~
22 ~~intention to foreclose, the foreclosing mortgagee shall conduct~~



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

7 ~~(b) Even if the signed letter of agreement is timely~~
8 ~~received, if there is no subsequent cooperation by the mortgagor~~
9 ~~to allow two open houses, the public sale may be held without~~
10 ~~any open houses of the mortgaged property. If the public notice~~
11 ~~of the public sale advertised the dates and times of the open~~
12 ~~houses, but there were no open houses because of the lack of~~
13 ~~cooperation by the mortgagor, the public sale may still be held~~
14 ~~as advertised, and the public notice of the public sale may not~~
15 ~~need to be republished."]~~

16 SECTION 58. Section 667-50, Hawaii Revised Statutes, is
17 repealed.

18 ~~["§667-50] Definitions. For purposes of this chapter,~~
19 ~~"foreclosure notice" shall mean notice of intention to foreclose~~
20 ~~given pursuant to section 667-5 or notice of default and~~
21 ~~intention to foreclose prepared pursuant to section 667-22."]~~



1 SECTION 59. Section 667-61, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§667-61~~ Definitions. For the purposes of sections~~
4 ~~667-62 to 667-65, "time share interest" shall have the same~~
5 ~~meaning as in section 514E-1."]~~

6 SECTION 60. Section 667-72, Hawaii Revised Statutes, is
7 repealed.

8 ~~["~~§667-72~~ Definitions. As used in this part:~~

9 ~~"Approved budget and credit counselor" means a budget and~~
10 ~~credit counseling agency that has received approval from a~~
11 ~~United States trustee or bankruptcy administrator to provide~~
12 ~~instructional courses concerning personal financial management~~
13 ~~pursuant to Title 11 United States Code section 111.~~

14 ~~"Approved housing counselor" means a housing counseling~~
15 ~~agency that has received approval from the United States~~
16 ~~Department of Housing and Urban Development to provide housing~~
17 ~~counseling services pursuant to section 106(a)(2) of the Housing~~
18 ~~and Urban Development Act of 1968, Title 12 United States Code~~
19 ~~section 1701x.~~

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



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

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

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

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

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

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

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

20 ~~(1) Who owns an interest in the residential property, and~~
21 ~~the interest is encumbered by the mortgage being~~
22 ~~foreclosed; and~~



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

5 SECTION 61. In codifying the new sections added by
6 sections 2 and 3 of this Act, the revisor of statutes shall
7 substitute appropriate section numbers for the letters used in
8 designating the new sections in this Act.

9 SECTION 62. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 63. This Act shall take effect on June 30, 2020;
12 provided that:

13 (1) Section 4 of this Act, amending section 454M-5, Hawaii
14 Revised Statutes, shall take effect on July 1, 2012;
15 and

16 (2) Section 25 of this Act, amending section 667-41,
17 Hawaii Revised Statutes, shall take effect on
18 September 1, 2012.



Report Title:

Mortgage Foreclosures; Homeowner Association Liens and Assessments

Description:

Implements the 2011 recommendations of the mortgage foreclosure task force, and other best practices, 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. Makes permanent the mortgage foreclosure dispute resolution program and the process for converting nonjudicial foreclosures of residential property into judicial foreclosures. Repeals the provision excluding participants of the dispute resolution program from converting nonjudicial foreclosure proceedings to judicial actions. Effective 06/30/20. (SD2)

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

