

---

---

# 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 three new sections to be appropriately  
17 designated and to read:

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

19 (a) All sums assessed by the association but unpaid for the  
20 share of the assessments chargeable to any unit shall constitute  
21 a lien on the unit. The priority of the association's lien  
22 shall be as provided in the association documents or by the date



1 of recordation of the liens, except as otherwise provided by  
2 law. A lien recorded by the association shall expire two years  
3 from the date of recordation.

4 The lien of the association may be foreclosed by action or  
5 by nonjudicial or power of sale foreclosure procedures set forth  
6 in chapter 667, by the managing agent or board, acting on behalf  
7 of the association and in the name of the association; provided  
8 that no association may foreclose a lien against any unit that  
9 arises solely from fines, penalties, legal fees, or late fees.  
10 In any association foreclosure, the unit owner shall be required  
11 to pay 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 (e) 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 its  
21 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      demanded 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 §421J-C Release of recorded liens of units by  
18 associations. (a) Any association that records a lien on a  
19 unit at the bureau of conveyance or the office of the assistant  
20 registrar of the land court, or both, shall provide to the unit  
21 owner a release of the recorded lien upon full satisfaction of



1 the recorded lien and discharge of any secured debt. The  
2 instrument for the release of the recorded lien shall:

3 (1) Be duly acknowledged;

4 (2) Sufficiently describe the recorded lien that has been  
5 satisfied; and

6 (3) Be recordable in the bureau of conveyances or office  
7 of the assistant registrar of the land court, or both,  
8 as appropriate.

9 (b) If the association fails to provide a release of the  
10 recorded lien as required by this section within thirty days  
11 from the date of a request made in writing by any party in  
12 interest, and sent by certified or registered mail to the  
13 association at its last known address, then:

14 (1) Any title insurer or underwritten title company as  
15 defined in section 431:20-102 may execute the release  
16 of the recorded lien on behalf of the unit owner;  
17 provided that:

18 (A) The release shall have attached to it an  
19 affidavit setting forth proof, such as a canceled  
20 check or written confirmation from the unit  
21 owner, that reasonably establishes that the



1           secured debt has been discharged and the  
2           association has been fully satisfied; and  
3        (B) The release shall be executed by an officer of  
4           the title insurer or underwritten title company.  
5        If an association's recorded lien is released by a  
6           title insurer or underwritten title company pursuant  
7           to this subsection but the secured debt has not been  
8           discharged, the recorded lien has not been fully  
9           satisfied, and the title insurer or underwritten title  
10          company acted with gross negligence or in bad faith in  
11          releasing the lien, the title insurer or underwritten  
12          title company releasing the recorded lien shall be  
13          liable to the association for treble damages and  
14          reasonable attorneys' fees and costs; or  
15        (2) The unit owner or a company issuing title insurance to  
16          a new owner of the unit, or the escrow company charged  
17          by the unit owner with obtaining the release of the  
18          recorded lien, or any other interested party, as  
19          plaintiff, may institute an action in any circuit  
20          court to obtain the release of the recorded lien;  
21          provided that:





- 1           (A) The plaintiff in the action shall mail a copy of  
2           the complaint to the association by certified or  
3           registered mail addressed to the association at  
4           its last known address;
- 5           (B) If the association does not file an answer to the  
6           complaint within forty-five days after the  
7           mailing, the court, upon receipt of an affidavit  
8           of mailing required by this section and upon  
9           satisfactory proof that the secured debt has been  
10           discharged and the lien has been fully satisfied,  
11           shall issue an order releasing the lien recorded  
12           by the association, which order shall be recorded  
13           in the bureau of conveyances or office of the  
14           assistant registrar of the land court, or both,  
15           as appropriate; and
- 16           (C) Upon a finding of good cause by the court, the  
17           plaintiff shall be entitled to treble damages and  
18           reasonable attorneys' fees and costs incurred in  
19           the action unless the court finds that the  
20           association had a reasonable basis for believing  
21           that a dispute existed regarding whether the  
22           recorded lien should have been released."



1           2. By amending section 421J-2 by adding a new definition  
2 to be appropriately inserted and to read as follows:

3           "Assessment" means funds collected by an association from  
4 association members to operate and manage the association,  
5 maintain property within the planned community for the common  
6 use or benefit of association members, or provide services to  
7 association members. The term also means expenditures made by,  
8 or financial liabilities of, the association for operation of  
9 the property and includes any allocations to reserves."

10           SECTION 3. Chapter 514A, Hawaii Revised Statutes, is  
11 amended by adding a new section to part V to be appropriately  
12 designated and to read as follows:

13           "§514A-       Release of recorded liens of apartments by  
14 associations. (a) Any association of apartment owners that  
15 records a lien on an apartment at the bureau of conveyance or  
16 the office of the assistant registrar of the land court, or  
17 both, shall provide to the apartment owner a release of the  
18 recorded lien upon full satisfaction of the recorded lien and  
19 discharge of any secured debt. The instrument for the release  
20 of the recorded lien shall:

21           (1) Be duly acknowledged;



1       (2) Sufficiently describe the recorded lien that has been  
2       satisfied; and

3       (3) Be recordable in the bureau of conveyances or office  
4       of the assistant registrar of the land court, or both,  
5       as appropriate.

6       (b) If the association of apartment owners fails to  
7       provide a release of the recorded lien as required by this  
8       section within thirty days from the date of a request made in  
9       writing by any party in interest, and sent by certified or  
10       registered mail to the association of apartment owners at its  
11       last known address, then:

12       (1) Any title insurer or underwritten title company as  
13       defined in section 431:20-102 may execute the release  
14       of the recorded lien on behalf of the apartment owner;  
15       provided that:

16       (A) The release shall have attached to it an  
17       affidavit setting forth proof, such as a canceled  
18       check or written confirmation from the apartment  
19       owner, that reasonably establishes that the  
20       secured debt has been discharged and the  
21       association of apartment owners has been fully  
22       satisfied; and



1           (B) The release shall be executed by an officer of  
2           the title insurer or underwritten title company.

3           If an association of apartment owners' recorded lien  
4           is released by a title insurer or underwritten title  
5           company pursuant to this subsection but the secured  
6           debt has not been discharged, the recorded lien has  
7           not been fully satisfied, and the title insurer or  
8           underwritten title company acted with gross negligence  
9           or in bad faith in releasing the lien, the title  
10           insurer or underwritten title company releasing the  
11           recorded lien shall be liable to the association of  
12           apartment owners for treble damages and reasonable  
13           attorneys' fees and costs; or

14           (2) The apartment owner or a company issuing title  
15           insurance to a new owner of the apartment, or the  
16           escrow company charged by the apartment owner with  
17           obtaining the release of the recorded lien, or any  
18           other interested party, as plaintiff, may institute an  
19           action in any circuit court to obtain the release of  
20           the recorded lien; provided that:

21           (A) The plaintiff in the action shall mail a copy of  
22           the complaint to the association of apartment



1 owners by certified or registered mail addressed  
2 to the association of apartment owners at its  
3 last known address;

4 (B) If the association of apartment owners does not  
5 file an answer to the complaint within forty-five  
6 days after the mailing, the court, upon receipt  
7 of an affidavit of mailing required by this  
8 section and upon satisfactory proof that the  
9 secured debt has been discharged and the lien has  
10 been fully satisfied, shall issue an order  
11 releasing the lien recorded by the association of  
12 apartment owners, which order shall be recorded  
13 in the bureau of conveyances or office of the  
14 assistant registrar of the land court, or both,  
15 as appropriate; and

16 (C) Upon a finding of good cause by the court, the  
17 plaintiff shall be entitled to treble damages and  
18 reasonable attorneys' fees and costs incurred in  
19 the action unless the court finds that the  
20 association of apartment owners had a reasonable  
21 basis for believing that a dispute existed



1                   regarding whether the recorded lien should have  
2                   been released."

3           SECTION 4. Chapter 514B, Hawaii Revised Statutes, is  
4 amended by adding a new section to part VI, subpart C, to be  
5 appropriately designated and to read as follows:

6           §514B-       Release of recorded liens of units by  
7 associations. (a) Any association that records a lien on a  
8 unit at the bureau of conveyance or the office of the assistant  
9 registrar of the land court, or both, shall provide to the unit  
10 owner a release of the recorded lien upon full satisfaction of  
11 the recorded lien and discharge of any secured debt. The  
12 instrument for the release of the recorded lien shall:

- 13           (1) Be duly acknowledged;  
14           (2) Sufficiently describe the recorded lien that has been  
15               satisfied; and  
16           (3) Be recordable in the bureau of conveyances or office  
17               of the assistant registrar of the land court, or both,  
18               as appropriate.

19           (b) If the association fails to provide a release of the  
20 recorded lien as required by this section within thirty days  
21 from the date of a request made in writing by any party in



1 interest, and sent by certified or registered mail to the  
2 association at its last known address, then:

3 (1) Any title insurer or underwritten title company as  
4 defined in section 431:20-102 may execute the release  
5 of the recorded lien on behalf of the unit owner;  
6 provided that:

7 (A) The release shall have attached to it an  
8 affidavit setting forth proof, such as a canceled  
9 check or written confirmation from the unit  
10 owner, that reasonably establishes that the  
11 secured debt has been discharged and the  
12 association has been fully satisfied; and

13 (B) The release shall be executed by an officer of  
14 the title insurer or underwritten title company.

15 If an association's recorded lien is released by a  
16 title insurer or underwritten title company pursuant  
17 to this subsection but the secured debt has not been  
18 discharged, the recorded lien has not been fully  
19 satisfied, and the title insurer or underwritten title  
20 company acted with gross negligence or in bad faith in  
21 releasing the lien, the title insurer or underwritten  
22 title company releasing the recorded lien shall be

1           liable to the association for treble damages and  
2           reasonable attorneys' fees and costs; or  
3           (2) The unit owner or a company issuing title insurance to  
4           a new owner of the unit, or the escrow company charged  
5           by the unit owner with obtaining the release of the  
6           recorded lien, or any other interested party, as  
7           plaintiff, may institute an action in any circuit  
8           court to obtain the release of the recorded lien;  
9           provided that:  
10           (A) The plaintiff in the action shall mail a copy of  
11           the complaint to the association by certified or  
12           registered mail addressed to the association at  
13           its last known address;  
14           (B) If the association does not file an answer to the  
15           complaint within forty-five days after the  
16           mailing, the court, upon receipt of an affidavit  
17           of mailing required by this section and upon  
18           satisfactory proof that the secured debt has been  
19           discharged and the lien has been fully satisfied,  
20           shall issue an order releasing the lien recorded  
21           by the association, which order shall be recorded  
22           in the bureau of conveyances or office of the





1                   assistant registrar of the land court, or both,  
2                   as appropriate; and  
3           (C) Upon a finding of good cause by the court, the  
4                   plaintiff shall be entitled to treble damages and  
5                   reasonable attorneys' fees and costs incurred in  
6                   the action unless the court finds that the  
7                   association had a reasonable basis for believing  
8                   that a dispute existed regarding whether the  
9                   recorded lien should have been released."

10           SECTION 5. Chapter 667, Hawaii Revised Statutes, is  
11 amended as follows:

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

14                               "PART ~~[I.]~~ IA. FORECLOSURE BY ACTION [~~OR~~  
15                               ~~FORECLOSURE BY POWER OF SALE]~~ "

16           2. By designating section 667-1 as section 667-1.5.

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

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

20           4. By adding a new part I to read:

21                               "PART I. GENERAL PROVISIONS

22           §667-1 Definitions. As used in this chapter:



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

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

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

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

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

21          "Serve", when referring to providing notice of intention to  
22          foreclose or notice of default and intention to foreclose



1 pursuant to a nonjudicial foreclosure, means to have service of  
2 the notice of default and intention to foreclose made in  
3 accordance with the service of process or the service of summons  
4 under the Hawaii rules of civil procedure and under sections  
5 634-35 and 634-36, excluding however, any return or affidavit of  
6 service obligations required therein.

7 "Time share interest" has the same meaning as in section  
8 514E-1.

9 "Unit" has the same meaning as in sections 421J-2 and 514B-  
10 3.

11 "Unit owner" has the same meaning as "member" in section  
12 421J-2 and "unit owner" in section 514B-3."

13 5. By adding a new part to be appropriately designated and  
14 to read:

15 "PART . ASSOCIATION ALTERNATE POWER OF SALE

16 FORECLOSURE PROCESS

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

21 §667-B Notice of default and intention to foreclose;  
22 contents; distribution; alternative remedies for failure to



1 **serve.** (a) When a unit owner has failed to pay an assessment,  
2 and when the association intends to conduct a power of sale  
3 foreclosure under this part, the association shall prepare a  
4 written notice of default and intention to foreclose addressed  
5 to the unit owner. The notice of default and intention to  
6 foreclose shall state:

- 7 (1) The name and address of the association;
- 8 (2) The name and last known address of the unit owners;
- 9 (3) With respect to the unit, the address or a description  
10 of its location, tax map key number, and certificate  
11 of title or transfer certificate of title number if  
12 registered in the land court;
- 13 (4) The description of the default or, if the default is a  
14 monetary default, an itemization of the delinquent  
15 amount;
- 16 (5) The action required to cure the default, including the  
17 delinquent amount and the estimated amount of the  
18 association's attorney's fees and costs, and all other  
19 fees and costs related to the default estimated to be  
20 incurred by the association by the deadline date;



- 1           (6) The date by which the default must be cured, which  
2           shall be within sixty days after service of the notice  
3           of default and intention to foreclose;
- 4           (7) A statement that if the default is not cured by the  
5           deadline date stated in the notice of default and  
6           intention to foreclose, the entire unpaid balance of  
7           the moneys owed to the association will become due,  
8           that the association intends to conduct a power of  
9           sale foreclosure to sell the unit at a public sale  
10          without any court action and without going to court,  
11          and that the association or any other person may  
12          acquire the unit at the public sale;
- 13          (8) 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 association may publish  
16          the public notice of the public sale on a website  
17          maintained by the department, pursuant to section 667-  
18          F(d) (2) ;
- 19          (9) The name, address, electronic address, and telephone  
20          number of the attorney who is representing the  
21          association; provided that the attorney shall be





1 licensed to practice law in the State and physically  
2 located in the State; and

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

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

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

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

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



1 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT  
2 REQUESTED."

3 (c) A unit owner may submit a payment plan within thirty  
4 days after service of a notice of default and intention to  
5 foreclose on the unit owner. The unit owner shall submit the  
6 payment plan to the association or its attorney by certified  
7 mail return receipt requested or by hand delivery. A unit owner  
8 may also cure the default within sixty days after service of a  
9 notice of default and intention to foreclose on the unit owner  
10 by paying the association the full amount of the default,  
11 including the foreclosing association's attorneys' fees and  
12 costs, and all other fees and costs related to the default that  
13 are incurred or estimated to be incurred by the foreclosing  
14 association. The association shall not reject a reasonable  
15 payment plan. From and after the date that the unit owner gives  
16 written notice to the association of its intent to cure the  
17 default or timely submits a payment plan, any nonjudicial  
18 foreclosure of the lien shall be stayed during the sixty-day  
19 period to cure the default or during the term of the payment  
20 plan or a longer period that is agreed upon by the parties. A  
21 unit owner's failure to strictly perform any agreed-upon payment



1 plan shall entitle the association to pursue its remedies  
2 without further delay.

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

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

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

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

- 20 (1) The unit owner;
- 21 (2) Any prior or junior creditors who have a recorded lien  
22 on the unit before the recordation of the notice of



1           default and intention to foreclose under section  
2           667-C;

3           (3) The state director of taxation;

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

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

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

12          (1) File a special proceeding in the circuit court of the  
13          circuit in which the unit is located, for permission  
14          to proceed with a nonjudicial foreclosure by serving  
15          the unit owner only by publication and posting;

16          (2) Proceed with a nonjudicial foreclosure of the unit;  
17          provided that if the association proceeds without the  
18          permission of the court, the association shall not be  
19          entitled to obtain a deficiency judgment against the  
20          unit owner, and the unit owner shall have one year  
21          from the date the association records the deed in the  
22          nonjudicial foreclosure to redeem the unit; 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  
5           owner's delinquency shall be calculated by deducting  
6           the net rental proceeds, if any, from the owner's  
7           delinquency.

8           **§667-C Recordation of notice of default and intention to**  
9           **foreclose.** Before the deadline date in the notice of default  
10          and intention to foreclose, the notice may be recorded in a  
11          recordable form in a manner similar to recordation of notices of  
12          pendency of action under section 501-151 or section 634-51, or  
13          both, as applicable. The recorded notice of default and  
14          intention to foreclose shall have the same effect as a notice of  
15          pendency of action. From and after the recordation of the  
16          notice of default and intention to foreclose, any person who  
17          becomes a purchaser or encumbrancer of the unit shall be deemed  
18          to have constructive notice of the power of sale foreclosure and  
19          shall be bound by the foreclosure.

20          **§667-D Cure of default.** (a) If the default is cured as  
21          required by the notice of default and intention to foreclose, or  
22          if the parties have agreed on a payment plan, the association



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

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

14 **§667-E Date of public sale of unit; place of sale. (a)**

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

- 17 (1) At least sixty days after the public notice of the  
18 public sale is distributed under section 667-F; or  
19 (2) At least fourteen days after the date of the  
20 publication of the third public notice advertisement  
21 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                   recordation 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  
5 mortgaged property 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[7] 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 a "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 mortgagor, the borrower, and  
11 the following person: \_\_\_\_\_. The  
12 notice of default and intention to foreclose was  
13 served on the following date and in the following  
14 manner: \_\_\_\_\_;

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



1 (3) The lien of the association and all liens junior in  
2 priority to the lien of a 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 mortgagor and any person claiming by, through, or  
7 under the mortgagor 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 ejection. The purchaser may bring an action in the  
11 nature of summary possession under chapter 666, ejection, 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 The recordation of both the conveyance document and the  
20 affidavit shall not operate as full satisfaction of the debt  
21 owed by the unit owner to the association unless the sale  
22 proceeds from the unit or the amounts paid by a purchaser under



1 the special assessment permitted by section 421J-A or 514B-146  
2 are sufficient to satisfy the unit owner's debt to the  
3 association, including the association's legal fees and costs.  
4 The debts of other lien creditors are unaffected except as  
5 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 6. 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 7. 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 8. 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 thereof or the buildings thereon, and no judgment, nor any



1 appeal or other proceeding to vacate or reverse any judgment,  
2 shall have any effect upon registered land as against persons  
3 other than the parties thereto, unless a full memorandum  
4 thereof, containing also a reference to the number of  
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 9. 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 667-57,~~ 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 10. Section 501-263, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[H]~~§501-263 ~~[H]~~ **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 667-5,7]~~ 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 11. 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 the association of apartment  
18 owners shall expire two years from the date of recordation.

19 The lien of the association of apartment owners may be  
20 foreclosed by action or by nonjudicial or power of sale  
21 foreclosure procedures set forth in chapter 667, by the managing  
22 agent or board of directors, acting on behalf of the association



1 of apartment owners [~~in like manner as a mortgage of real~~  
2 ~~property.~~] and in the name of the association of apartment owners;  
3 provided that no association of apartment owners may foreclose a  
4 lien against any apartment that arises solely from fines,  
5 penalties, legal fees, or late fees. In any such foreclosure,  
6 the apartment owner shall be required to pay a reasonable rental  
7 for the apartment, if so provided in the bylaws [~~7~~] or the law, and  
8 the plaintiff in the foreclosure shall be entitled to the  
9 appointment of a receiver to collect the rental owed [~~7~~] by the  
10 apartment owner or any tenant of the apartment. If the  
11 association of apartment owners is the plaintiff, it may request  
12 that its managing agent be appointed as receiver to collect the  
13 rent from the tenant. The managing agent or board of directors,  
14 acting on behalf of the association of apartment owners [~~7~~] and in  
15 the name of the association of apartment owners, unless prohibited  
16 by the declaration, may bid on the apartment at foreclosure sale,  
17 and acquire and hold, lease, mortgage, and convey the apartment.  
18 Action to recover a money judgment for unpaid common expenses  
19 shall be maintainable without foreclosing or waiving the lien  
20 securing the unpaid common expenses owed.

21 (b) Except as provided in subsection (g), when the mortgagee  
22 of a mortgage of record or other purchaser of an apartment obtains



1 title to the apartment as a result of foreclosure of the mortgage,  
2 the acquirer of title and the acquirer's successors and assigns  
3 shall not be liable for the share of the common expenses or  
4 assessments by the association of apartment owners chargeable to  
5 the apartment [~~which~~] that became due prior to the acquisition of  
6 title to the apartment by the acquirer. The unpaid share of  
7 common expenses or assessments shall be deemed to be common  
8 expenses collectible from all of the apartment owners, including  
9 the acquirer and the acquirer's successors and assigns. The  
10 mortgagee of record or other purchaser of the apartment shall be  
11 deemed to acquire title and shall be required to pay the  
12 apartment's share of common expenses and assessments beginning:

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





1 title under paragraph (1), (2), or (3), if transfer of title is  
2 delayed past the thirty-six days specified in paragraph (1), the  
3 sixty days specified in paragraph (2), or the thirty days  
4 specified in paragraph (3), when a person who appears at the  
5 hearing on the motion or a party to the foreclosure action  
6 requests reconsideration of the motion or order to confirm sale,  
7 objects to the form of the proposed order to confirm sale,  
8 appeals the decision of the court to grant the motion to confirm  
9 sale, or the debtor or mortgagor declares bankruptcy or is  
10 involuntarily placed into bankruptcy. In any such case, the  
11 mortgagee of record or other purchaser of the apartment shall be  
12 deemed to acquire title upon recordation of the instrument of  
13 conveyance."

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

15 "(h) The amount of the special assessment assessed under  
16 subsection (g) shall not exceed the total amount of unpaid  
17 regular monthly common assessments that were assessed during the  
18 [~~twelve~~] six months immediately preceding the completion of the  
19 judicial or nonjudicial power of sale foreclosure. [~~In no event~~  
20 ~~shall the amount of the special assessment exceed the sum of~~  
21 ~~\$7,200.~~]



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

3 "Completion" means:

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

8 (2) In a judicial foreclosure, when a purchaser is  
9 deemed to acquire title pursuant to subsection  
10 (b).

11 "Regular monthly common assessments" shall not include:

12 (1) Any other special assessment, except for a  
13 special assessment imposed on all apartments as  
14 part of a budget adopted pursuant to section  
15 514A-83.6;

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

17 (3) Interest assessed by the association of apartment  
18 owners;

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

20 (5) Any fees or costs related to the collection or  
21 enforcement of the assessment, including  
22 attorneys' fees and court costs."



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

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

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

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

10 (2) All sums unpaid on any mortgage of record that was  
11 recorded prior to the recordation of a notice of a  
12 lien by the association, and costs and expenses  
13 including attorneys' fees provided in such  
14 mortgages [-];

15 provided that a lien recorded by the association shall expire  
16 two years from the date of recordation.

17 The lien of the association may be foreclosed by action or  
18 by nonjudicial or power of sale foreclosure procedures set forth  
19 in chapter 667, by the managing agent or board, acting on behalf  
20 of the association [~~in like manner as a mortgage of real~~  
21 ~~property.~~] and in the name of the association; provided that no  
22 association may foreclose a lien against any unit that arises



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

16 (b) Except as provided in subsection (g), when the  
 17 mortgagee of a mortgage of record or other purchaser of a unit  
 18 obtains title to the unit as a result of foreclosure of the  
 19 mortgage, the acquirer of title and the acquirer's successors  
 20 and assigns shall not be liable for the share of the common  
 21 expenses or assessments by the association chargeable to the  
 22 unit [~~which~~] that became due prior to the acquisition of title



1 to the unit by the acquirer. The unpaid share of common  
2 expenses or assessments shall be deemed to be common expenses  
3 collectible from all of the unit owners, including the acquirer  
4 and the acquirer's successors and assigns. The mortgagee of  
5 record or other purchaser of the unit shall be deemed to acquire  
6 title and shall be required to pay the unit's share of common  
7 expenses and assessments beginning:

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

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

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

15 (4) Upon the recording of the instrument of conveyance;  
16 whichever occurs first; provided that the mortgagee of record or  
17 other purchaser of the unit shall not be deemed to acquire title  
18 under paragraph (1), (2), or (3), if transfer of title is  
19 delayed past the thirty-six days specified in paragraph (1), the  
20 sixty days specified in paragraph (2), or the thirty days  
21 specified in paragraph (3), when a person who appears at the  
22 hearing on the motion or a party to the foreclosure action



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

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

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

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

19 "Completion" means:

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



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

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

5           "Regular monthly common assessments" does not include:

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

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

10          (3) Interest assessed by the association;

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

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

15          SECTION 13. Section 607-5, Hawaii Revised Statutes, is  
16          amended by amending subsections (a) and (b) to read as follows:

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



1 adults charged with commission of a crime, or to proceedings  
2 under section 571-11(1), (2), or (9), to proceedings under  
3 chapter 333F or 334, to small estates including decedents'  
4 estates and protection of property of minors and persons under  
5 disability when the amount payable is fixed by another statute[  
6 ~~er to nonjudicial foreclosures converted to judicial proceedings~~  
7 ~~pursuant to section 667-53; and]~~; provided further that the fees  
8 prescribed by subsection (c) (32) shall be deposited by the clerk  
9 of the circuit court into the judiciary computer system special  
10 fund pursuant to section 601-3.7[~~7~~]; and provided further that  
11 the fees prescribed by subsection (b) (1a) shall be deposited by  
12 the clerk of the circuit court as provided in section 667-  
13 53(a) (6).

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

#### 16 SCHEDULE

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





1 (b) PART I

2 Action or proceeding, general:

3 (1) Civil action or special proceeding, unless

4 another item in part I applies ..... \$200

5 (1a) Petition for conversion of nonjudicial

6 foreclosure to judicial foreclosure ..... \$250

7 (2) Appeal to a circuit court ..... \$100

8 (3) Transfer of action to circuit court from district

9 court, in addition to district court fees ..... \$125

10 Trusts:

11 (4) Proceeding for (A) appointment of trustee; (B)

12 appointment of successor; (C) resignation of

13 trustee; (D) instructions; (E) approval of

14 investment; (F) approval of sale, mortgage,

15 lease, or other disposition of property; (G)

16 approval of compromise of claim, for each such

17 matter ..... \$100

18 (5) Proceeding for (A) removal of trustee; (B) order

19 requiring accounting; (C) invalidation of action

20 taken by trustee; (D) termination of trust, for

21 each such matter ..... \$100



- 1           (6) Accounting, this fee to be paid for each account
- 2                   filed and to include the settlement of the
- 3                   account ..... \$10
- 4           (7) Vesting order ..... no charge under part I
- 5           (8) Allowance of fees of trustees, attorneys, or
- 6                   other fees for services incurred in a
- 7                   proceeding for which a fee has been paid
- 8                   under this section ..... no charge under part I
- 9           (8a) Registration of a trust, or release of
- 10                   registration, under chapter 560 ..... \$3
- 11           (9) Any other proceeding relating to a trust ..... \$15
- 12 Conservatorship:
- 13           (10) Proceeding for (A) appointment; (B) appointment
- 14                   of successor; (C) resignation; (D) instructions,
- 15                   unless included in one of the foregoing
- 16                   proceedings; (E), (F), (G) approval of any matter
- 17                   listed in (E), (F), or (G) of item (4) in
- 18                   relation to a trust, for each such matter ..... \$100
- 19           (11) Proceeding of the nature listed in (A), (B), (C),
- 20                   or (D) of item (5) in relation to a trust, for
- 21                   each such matter ..... \$15



1 (12) Accounting, same as provided by item (6) in  
2 relation to a trust ..... \$10

3 (13) Any other proceeding relating to a  
4 conservatorship ..... no charge under part I

5 Guardianship:

6 (13a) Guardianship, including all matters of the nature  
7 listed in items (4) to (9), whether in family or  
8 circuit court ..... \$100

9 Probate (decedents' estates). These fees include all matters of  
10 the nature listed in items (4) to (9), without additional  
11 charge:

12 (14) Probate, administration, domiciliary foreign  
13 personal representative, or ancillary  
14 administration, this fee to be paid once only for  
15 each decedent's estate ..... \$100

16 Family court cases:

17 (15) Matrimonial action (annulment, divorce,  
18 separation, or separate maintenance) ..... \$100

19 (16) Adoption ..... \$100

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

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



1           (19) Any other family court proceeding, except motions or  
 2           other pleadings in matrimonial, adoption, and  
 3           guardianship actions, but including without limitation  
 4           custody proceedings even if in the form of an habeas  
 5           corpus proceeding ..... \$15"

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

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

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



1 " ~~[+]~~ §667-5.5 ~~[+]~~ Foreclosure notice; planned communities;  
 2 condominiums; cooperative housing projects. Notwithstanding any  
 3 law or agreement to the contrary, any person who forecloses on a  
 4 property under this part within a planned community, a  
 5 condominium apartment or unit, or an apartment in a cooperative  
 6 housing project shall notify, by registered or certified mail,  
 7 the board of directors of the planned community association, the  
 8 association of owners of the condominium project, or the  
 9 cooperative housing project in which the property to be  
 10 foreclosed is located, of the following:

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

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



1 housing corporation is a party in a foreclosure action. This  
2 section shall not affect civil proceedings against parties other  
3 than the planned community association, association of owners,  
4 or cooperative housing corporation."

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

7 "**§667-10 Power unaffected by transfer; surplus after sale.**

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

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

20 "**§667-21 [~~Alternate power~~] Power of sale process[~~+~~**  
21 **~~definitions~~]. [~~(a)~~] The power of sale process in this part is**



1 an alternative [~~power of sale process~~] to the foreclosure by  
2 action [~~and the foreclosure by power of sale~~] in part [~~I.~~] IA.

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

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

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

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

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

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



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

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

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

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





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

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

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

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

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

17       ~~"Nonjudicial foreclosure" means foreclosure under power of~~  
18 ~~sale.~~

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



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

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

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

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

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

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



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

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

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

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

11 "[+]§667-21.5[+] 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 way of registered or certified  
17 mail, the board of directors of the planned community  
18 association, the association of owners of the condominium  
19 project, or the cooperative housing project in which the  
20 property to be foreclosed is located, of the 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 when the planned  
10 community association, condominium association of owners, or  
11 cooperative housing corporation is a party in a foreclosure  
12 action. This section shall not affect civil proceedings against  
13 parties other than the planned community association,  
14 association of owners, or cooperative housing corporation."

15        SECTION 19. Section 667-22, Hawaii Revised Statutes, is  
16 amended as follows:

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

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



1 borrower, and any guarantor. The notice of default and  
2 intention to foreclose shall state:

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



1 shall be at least sixty days after the date of the  
2 notice of default and intention to foreclose;

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

13 (8) 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 mortgagee may publish the  
16 public notice of the public sale on a website  
17 maintained by the department, pursuant to section 667-  
18 27(d)(2);

19 [~~8~~] (9) The name, address, electronic address, and  
20 telephone number of the attorney who is representing  
21 the foreclosing mortgagee; provided that the attorney  
22 shall be licensed to practice law in the State and



1           physically located in the State; and  
 2       [~~(9)~~] (10) Notice of the right of the owner-occupant to  
 3           elect to participate in any other process as  
 4           established by law."

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

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

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

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

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

19       (3) The state director of taxation;

20       (4) The director of finance of the county where the  
 21 mortgaged property is located;

22       (5) The department of commerce and consumer affairs, by



1 filing the notice with the department when required;  
2 and

3 (6) Any other person entitled to receive notice under this  
4 part."

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

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

20 (b) If the default is not cured as required by the notice  
21 of default and intention to foreclose, the parties have not  
22 reached [~~a settlement document pursuant to part V~~] an agreement





1 to resolve the nonjudicial foreclosure and no report of  
 2 noncompliance has been issued against the mortgagee under  
 3 section 667-82, and the mortgagor has not elected to convert the  
 4 foreclosure to a judicial action, the foreclosing mortgagee,  
 5 without filing a court action and without going to court, may  
 6 foreclose the mortgage under power of sale to sell the mortgaged  
 7 property at a public sale."

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

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

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

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

20 (3) At a state facility in Kailua-Kona, for a public sale  
 21 of mortgaged property located in the ~~[western portion~~  
 22 ~~of the county of Hawaii,]~~ districts of North Kohala,



- 1           South Kohala, North Kona, South Kona, or Kau;
- 2           (4) At a state facility in the county seat of Maui, for a
- 3           public sale of mortgaged property located in the
- 4           county of Maui; and
- 5           (5) At a state facility in the county seat of Kauai, for a
- 6           public sale of mortgaged property located in the
- 7           county of Kauai;
- 8 as designated by the department of accounting and general
- 9 services; provided further that no public sale shall be held on
- 10 grounds or at facilities under the administration of the
- 11 judiciary. The public sale shall be held during business hours
- 12 on a business day."

13           SECTION 22. Section 667-27, Hawaii Revised Statutes, is

14 amended as follows:

- 15           1. By amending subsection (a) to read:
- 16           "(a) The foreclosing mortgagee shall prepare the public
- 17 notice of the public sale. The public notice shall state:
- 18           (1) The date, time, and place of the public sale;
- 19           (2) The dates and times of the two open houses of the
- 20 mortgaged property, or if there will not be any open
- 21 houses, the public notice shall so state;
- 22           (3) The unpaid balance of the moneys owed to the mortgagee



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

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

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

- 19 (1) Printed in not less than seven-point font and  
20 published in the classified section of a [~~daily~~]  
21 newspaper [~~having the largest~~] of general circulation  
22 [~~specifically~~] in the [~~county where the mortgaged~~



1 ~~property is located; provided that for property~~  
2 ~~located in a county with a population of more than one~~  
3 ~~hundred thousand but less than three hundred thousand,~~  
4 ~~the public notice shall be published in the newspaper~~  
5 ~~having the largest general circulation specifically in~~  
6 ~~the western or eastern half of the county, as the case~~  
7 ~~may be, in which the property is located.] real~~  
8 ~~property tax zone in which the mortgaged property is~~  
9 ~~located, as shown on the applicable county real~~  
10 ~~property tax maps kept by each respective county's~~  
11 ~~real property tax assessment division, except for the~~  
12 ~~county of Kalawao which shall be considered its own~~  
13 ~~geographic area for the purposes of this paragraph.~~  
14 ~~For the purposes of this paragraph, a newspaper is of~~  
15 ~~general circulation if the newspaper:~~

- 16 (A) Contains news of a general nature; and  
17 (B) Is distributed within the county where the  
18 mortgaged property is located:

- 19 (i) At least weekly;  
20 (ii) For a minimum of six months unless  
21 interrupted by strike, natural disaster, or  
22 act of war or terror; and



1           (iii) To a minimum of one per cent of the  
2           residents of the county, as determined by  
3           the last decennial United States census and  
4           as verified by an independent audit.

5           A person may apply to the circuit court for an order  
6           confirming a newspaper to be of general circulation  
7           for purposes of this paragraph, which the court shall  
8           grant upon proof of compliance with this paragraph.  
9           The public notice shall be published once each week  
10           for three consecutive weeks, constituting three  
11           publications. The public sale shall take place no  
12           sooner than fourteen days after the date of the  
13           publication of the third public notice  
14           advertisement[-]; or

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

19           SECTION 23. Section 667-28, Hawaii Revised Statutes, is  
20           amended by amending subsection (a) to read as follows:



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

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

6           and

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

9           SECTION 24. Section 667-32, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

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

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

21           (2) The foreclosing mortgagee is a [~~"foreclosing~~  
22 ~~mortgagee"~~] mortgagee as defined in [~~the power of sale~~



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

(3) The power of sale foreclosure is of a mortgage made by

\_\_\_\_\_ (name of mortgagor)

("mortgagor"), dated \_\_\_\_\_, and

recorded in the \_\_\_\_\_ (bureau of

conveyances or office of the assistant registrar of

the land court) as \_\_\_\_\_ (recordation

information). The mortgaged property is located at:

\_\_\_\_\_ (address or description of

location) and is identified by tax map key number:

\_\_\_\_\_. The legal description of the

mortgaged property, including the certificate of title

or transfer certificate of title number if registered

in the land court, is attached as Exhibit "A". The

name of the borrower, if different from the mortgagor,

is \_\_\_\_\_ ("borrower");

(4) Pursuant to the power of sale provision of the

mortgage, the power of sale foreclosure was conducted

as required by the power of sale foreclosure law. The

following is a summary of what was done:

(A) A notice of default and intention to foreclose



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

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

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

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

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





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

(F) The public notice of the public sale was sent to  
14 the mortgagor, to the borrower, to the state  
15 director of taxation, to the director of finance  
16 of the county where the mortgaged property is  
17 located, and to the following:  
18 \_\_\_\_\_ . The public notice was sent  
19 on the following dates and in the following  
20 manner: \_\_\_\_\_. Those dates were  
21 after the deadline date in the notice of default  
22



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

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

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

13 (I) A public sale of the mortgaged property was held  
14 on a business day during business hours on:  
15 \_\_\_\_\_ (date), at  
16 \_\_\_\_\_ (time), at the following  
17 location: \_\_\_\_\_. The highest  
18 successful bidder was \_\_\_\_\_ (name)  
19 with the highest successful bid price of  
20 \$ \_\_\_\_\_; and

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



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

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

4           SECTION 25. Section 667-33, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

15           SECTION 26. Section 667-37, Hawaii Revised Statutes, is  
16 amended to read as follows:

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



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

6 SECTION 27. Section 667-41, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§667-41 Public information notice requirement.

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



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



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

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

7                    WHAT IS FORECLOSURE?

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

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

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

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



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

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

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

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



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

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





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

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

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

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



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

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

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



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

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

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

17          SECTION 28. Section 667-53, Hawaii Revised Statutes, is  
18          amended to read as follows:

19          "~~§~~667-53~~§~~ Conversion to judicial foreclosure;  
20          residential property; conditions. (a) An owner-occupant of a  
21          residential property that is subject to nonjudicial foreclosure



1 under part [~~I-0x~~] II may convert the action to a judicial  
2 foreclosure provided that:

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

9 (A) The foreclosure notice is served on the owner-  
10 occupant, as required by section [~~667-5-0x~~] 667-  
11 22; or

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

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



1 guarantors, shall file a statement in the circuit  
2 court action that they agree to submit themselves to  
3 the judicial process and the jurisdiction of the  
4 circuit court; provided further that if this condition  
5 is not satisfied, the circuit court action may be  
6 dismissed with prejudice as to the right of any owner-  
7 occupant to convert the action to a judicial  
8 proceeding, and the mortgagee may proceed  
9 nonjudicially;

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

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

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



1           action; and

2           (6) ~~[Notwithstanding chapter 607, the]~~ The fee for filing

3           the petition shall be ~~[not more than \$525, of which]~~

4           \$250, which shall be deposited into the mortgage

5           foreclosure dispute resolution special fund

6           established under section 667-86 ~~[, provided that if~~

7           ~~the mortgage foreclosure dispute resolution program~~

8           ~~under part V has not yet been implemented, the filing~~

9           ~~fee shall be not more than \$300].~~

10           (b) This section shall not apply to foreclosures of

11           association liens that arise under a declaration filed pursuant

12           to chapter 421J, 514A, or 514B.

13           ~~[(c) This section shall not apply to a foreclosure for~~

14           ~~which the mortgagor has elected to participate in the mortgage~~

15           ~~foreclosure dispute resolution program pursuant to part V.]~~

16           ~~[(d)]~~ (c) The judiciary may create and adopt a form for a

17           conversion petition."

18           SECTION 29. Section 667-54, Hawaii Revised Statutes, is

19           amended by amending subsection (a) to read as follows:

20           " ~~[+]~~ (a) ~~[+]~~ A petition filed pursuant to section 667-53

21           shall contain at a minimum:

22           (1) A caption setting forth the name of the court, the



- 1 title of the action, and the file number; provided  
2 that the title of the action shall include the names  
3 of the filing party as petitioner and the foreclosing  
4 party as the respondent;
- 5 (2) The name, mailing address, and telephone number of the  
6 filing party;
- 7 (3) The address or tax map key number, and the certificate  
8 of title or transfer certificate of title number if  
9 ~~[within the land court's jurisdiction,~~ registered in  
10 the land court, of the property subject to the  
11 foreclosure action;
- 12 (4) A statement identifying all other owner-occupants and  
13 mortgagors of the property whose interests are pledged  
14 or otherwise encumbered by the mortgage that is being  
15 foreclosed and all persons who have signed the  
16 promissory note or other instrument evidencing the  
17 debt secured by the mortgage that is being foreclosed,  
18 including without limitation co-obligors and  
19 guarantors;
- 20 (5) A certification under penalty of perjury that the  
21 filing party is an owner-occupant of the subject  
22 property and seeks to convert the nonjudicial



1 foreclosure to a judicial proceeding;

2 (6) A statement certifying that the filing party served a

3 copy of the petition on the attorney identified in the

4 foreclosure notice under section [~~667-5-0x~~] 667-22

5 either by personal delivery at, or by postage prepaid

6 United States mail to, the address of the attorney as

7 set forth in the foreclosure notice under section

8 [~~667-5-0x~~] 667-22; and

9 (7) A copy of the foreclosure notice that was served on

10 the filing party pursuant to section [~~667-5-0x~~] 667-22

11 and for which the filing party is seeking to convert

12 to a judicial proceeding."

13 SECTION 30. Section 667-55, Hawaii Revised Statutes, is

14 amended to read as follows:

15 "[~~+~~]**§667-55**[~~+~~] **Notice of default and intention to**

16 **foreclose; residential property; required statement on**

17 **conversion.** (a) The foreclosure notice that is served as

18 required under section [~~667-5-0x~~] 667-22 shall include, in

19 addition to the contents required under section [~~667-5-0x~~] 667-

20 22, a statement printed in not less than fourteen-point font as

21 follows:

22 "IF THE PROPERTY BEING FORECLOSED IS





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

21 IN ADDITION, ALL OWNER-OCCUPANTS AND  
22 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE



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

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

18 MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE  
19 AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN  
20 ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID  
21 FORECLOSURE OR TO MITIGATE THE EFFECTS OF  
22 FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF [AN



1 ~~OWNER OCCUPANT FILES FOR CONVERSION,] THE~~  
 2 NONJUDICIAL FORECLOSURE IS CONVERTED TO A JUDICIAL  
 3 FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT  
 4 THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

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

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

19 SECTION 31. Section 667-56, Hawaii Revised Statutes, is  
 20 amended to read as follows:

21 "[+]§667-56[+] **Prohibited conduct.** It shall be a  
 22 prohibited practice for any foreclosing mortgagee to engage in



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



1           bona fide loan modification negotiations with the  
2           mortgagor; or  
3       (7) Completing nonjudicial foreclosure proceedings against  
4           a mortgagor who has been accepted or is being  
5           evaluated for consideration for entry into a federal  
6           loan modification program before obtaining a  
7           certificate or other documentation confirming that the  
8           mortgagor is no longer eligible for, or an active  
9           participant of, that federal program."

10       SECTION 32. Section 667-57, Hawaii Revised Statutes, is  
11 amended to read as follows:

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



1 section 667-81.

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

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

16 SECTION 33. Section 667-58, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[H]§667-58[H] Valid notice[-]; affiliate statement. (a)  
19 Any notices made pursuant to this chapter may be issued only by  
20 persons authorized by a foreclosing mortgagee or lender pursuant  
21 to an affiliate statement signed by that foreclosing mortgagee  
22 or lender and recorded at the bureau of conveyances identifying



1 the agency or affiliate relationship and the authority granted  
2 or conferred to that agent or representative.

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

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

18 (d) No attorney of a mortgage servicer, foreclosing  
19 mortgagee, or lender shall be required to be included in any  
20 affiliate statement of a foreclosing mortgagee or lender. No  
21 notice or other correspondence made by any attorney for the  
22 foreclosing mortgagee or lender shall be required to reference



1 any affiliate statement made by the foreclosing mortgagee or  
2 lender. Any notice or other correspondence made by any attorney  
3 for a mortgage servicer shall reference, in accordance with  
4 subsection (b), the appropriate affiliate statement of the  
5 foreclosing mortgagee or lender authorizing the mortgage  
6 servicer to act."

7 SECTION 34. Section 667-59, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[+]§667-59[+] Actions and communications with the  
10 mortgagor in connection with a foreclosure. A foreclosing  
11 mortgagee shall be bound by all agreements, obligations,  
12 representations, or inducements made on its behalf by its  
13 agents, including but not limited to its employees,  
14 representatives, mortgage servicers, or persons authorized by a  
15 foreclosing mortgagee or lender pursuant to an affiliate  
16 statement recorded in the bureau of conveyances pursuant to  
17 section 667-58.

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

20 SECTION 35. Section 667-60, Hawaii Revised Statutes, is  
21 amended to read as follows:





1 " ~~[+]~~ §667-60 ~~[+]~~ Unfair or deceptive act or practice ~~[+]~~ ;  
2 transfer of title. (a) Any foreclosing mortgagee who  
3 ~~[violates]~~ engages in any of the following violations of this  
4 chapter shall have committed an unfair or deceptive act or  
5 practice under section 480-2 ~~[+]~~ ;

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

9 (2) Failing to publish, or to post, information on the  
10 mortgaged property, as required by section 667-27 or  
11 667-28;

12 (3) Failing to take any action required by section 667-24  
13 if the default is cured or an agreement is reached;

14 (4) Engaging in conduct prohibited under section 667-56;

15 (5) Holding a public sale in violation of section 667-25  
16 or section 667-26;

17 (6) Failing to include in a public notice of public sale  
18 the information required by section 667-27 or section  
19 667-28;

20 (7) Failing to provide the information required by section  
21 667-41;



- 1       (8) With regard to mortgage foreclosure dispute resolution  
2       under part V:
- 3       (A) Failing to provide notice of the availability of  
4       dispute resolution as required by section 667-75;
- 5       (B) Participating in dispute resolution without  
6       authorization to negotiate a loan modification,  
7       or without access to a person so authorized, as  
8       required by section 667-80(a)(1);
- 9       (C) Failing to provide required information or  
10       documents as required by section 667-80(c); or
- 11       (D) Completing a nonjudicial foreclosure if a  
12       neutral's closing report under section 667-82  
13       indicates that the foreclosing mortgagee failed  
14       to comply with requirements of the mortgage  
15       foreclosure dispute resolution program;
- 16       (9) Completing a nonjudicial foreclosure while a stay is  
17       in effect under section 667-83;
- 18       (10) Failing to distribute sale proceeds as required by  
19       section 667-31;
- 20       (11) Making any false statement in the affidavit of public  
21       sale required by section 667-32;



1       (12) Attempting to collect a deficiency in violation of  
2           section 667-38; and

3       (13) Failing to file a foreclosure notice with the  
4           department as required by section 667-76(a).

5       (b) Notwithstanding subsection (a), the transfer of title  
6       to the purchaser of the property as a result of a foreclosure  
7       under this chapter shall only be subject to avoidance under  
8       section 480-12 for violations described in subsection (a)(1) to  
9       (9) if such violations are shown to be substantial and material;  
10       provided that a foreclosure sale shall not be subject to  
11       avoidance under section 480-12 for violation of section 667-  
12       56(5).

13       (c) Any action to void the transfer of title to the  
14       purchaser of property under this chapter shall be filed in the  
15       circuit court of the circuit within which the foreclosed  
16       property is situated no later than one hundred eighty days  
17       following the recording of the affidavit required by section  
18       667-32. If no such action is filed within the one hundred  
19       eighty-day period, then title to the property shall be deemed  
20       conclusively vested in the purchaser free and clear of any claim  
21       by the mortgagor or anyone claiming by, through, or under the  
22       mortgagor."



1 SECTION 36. Section 667-63, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

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

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

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



1 SECTION 37. Section 667-71, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

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

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

13 SECTION 38. Section 667-73, Hawaii Revised Statutes, is  
14 amended as follows by amending subsection (c) to read as  
15 follows:

16 "(c) The department is authorized to contract with county,  
17 state, or federal agencies, and with private organizations or  
18 approved housing counselors or approved budget and credit  
19 counselors for the performance of any of the functions of this  
20 part. These contracts shall not be subject to chapter 103D or  
21 103F."



1 SECTION 39. Section 667-74, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§667-74[+] Availability of dispute resolution required  
4 before foreclosure. Before a public sale may be conducted  
5 pursuant to section [~~667-5-0x~~] 667-25 for a residential property  
6 that is occupied by an owner-occupant [~~as a primary residence~~],  
7 the foreclosing mortgagee [~~shall~~], at the election of the owner-  
8 occupant, shall participate in the mortgage foreclosure dispute  
9 resolution program under this part to attempt to negotiate an  
10 agreement that avoids foreclosure or mitigates damages in cases  
11 where foreclosure is unavoidable."

12 SECTION 40. Section 667-75, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§667-75[+] Notice of dispute resolution availability  
15 required. (a) A foreclosure notice served pursuant to section  
16 [~~667-5-0x~~] 667-22(e) shall include notice that the mortgagee is  
17 required, at the election of an owner-occupant, to participate  
18 in the mortgage foreclosure dispute resolution program pursuant  
19 to this part to attempt to avoid foreclosure or to mitigate  
20 damages where foreclosure is unavoidable.

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



- 1 (1) The name and contact information of the mortgagor and  
2 the mortgagee;
- 3 (2) The subject property address and legal description,  
4 including tax map key number and the certificate of  
5 title or transfer certificate of title number if  
6 ~~[within the land court's jurisdiction;]~~ registered in  
7 the land court;
- 8 (3) The name and contact information of a person or entity  
9 authorized to negotiate a loan modification on behalf  
10 of the mortgagee;
- 11 (4) A statement that the mortgagor shall consult with an  
12 approved housing counselor or an approved budget and  
13 credit counselor at least thirty days prior to the  
14 first day of a scheduled dispute resolution session;
- 15 (5) Contact information for all ~~[local]~~ approved housing  
16 counselors;
- 17 (6) Contact information for all ~~[local]~~ approved budget  
18 and credit counselors;
- 19 (7) A statement that the mortgagor electing to participate  
20 in the mortgage foreclosure dispute resolution program  
21 shall provide a certification under penalty of perjury  
22 to the department that the mortgagor is an owner-



1 occupant of the subject property, including supporting  
2 documentation;

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

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

13 SECTION 41. Section 667-76, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§667-76[+] Mortgagee's filing of notice with  
16 department; filing fee. (a) Within three days after a  
17 mortgagee serves a foreclosure notice on an owner-occupant  
18 pursuant to section [~~667-5-02~~] 667-22, the mortgagee shall file  
19 the foreclosure notice with the department and pay a filing fee  
20 of \$250, which shall be deposited into the mortgage foreclosure  
21 dispute resolution special fund established under section 667-  
22 86.





1           (b) ~~[Violation of this section shall constitute an unfair~~  
2 ~~and deceptive act or practice subject to section 480-2.]~~ A  
3 mortgagee who elects to publish a public notice of public sale  
4 electronically pursuant to section 667-27(d)(2) or 667-F(d)(2)  
5 shall publish the notice by filing the same with the department  
6 and paying a filing fee of \$ \_\_\_\_\_, which shall be deposited  
7 into the mortgage foreclosure dispute resolution special fund  
8 established under section 667-86."

9           SECTION 42. Section 667-77, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "~~+~~§667-77~~+~~ Notification to mortgagor by department.  
12 Within ten days after the mortgagee's filing of a notice of  
13 default and intention to foreclose with the department, the  
14 department shall mail a written notification by registered or  
15 certified mail to the mortgagor that a notice of default and  
16 intention to foreclose has been filed with the department. The  
17 notification shall inform the mortgagor of an owner-occupant's  
18 right to elect to participate in the foreclosure dispute  
19 resolution program and shall include:

- 20           (1) Information about the mortgage foreclosure dispute
- 21                 resolution program;
- 22           (2) A form for an owner-occupant to elect or to waive



1 participation in the mortgage foreclosure dispute  
2 resolution program pursuant to this part that shall  
3 contain instructions for the completion and return of  
4 the form to the department and the department's  
5 mailing address;

6 (3) A statement that the mortgagor electing to participate  
7 in the mortgage foreclosure dispute resolution program  
8 shall provide a certification under penalty of perjury  
9 to the department that the mortgagor is an owner-  
10 occupant of the subject property, including a  
11 description of acceptable supporting documentation as  
12 required by section 667-78(a)(2);

13 (4) A statement that the owner-occupant shall elect to  
14 participate in the mortgage foreclosure dispute  
15 resolution program pursuant to this part no later than  
16 thirty days after the department's mailing of the  
17 notice or the owner-occupant shall be deemed to have  
18 waived the option to participate in the mortgage  
19 foreclosure dispute resolution program;

20 (5) A description of the information required under  
21 section 667-80(c)(2) that the owner-occupant shall  
22 provide to the mortgagee and the neutral assigned to



- 1 the dispute resolution;
- 2 (6) A statement that the owner-occupant shall consult with
- 3 an approved housing counselor or approved budget and
- 4 credit counselor at least thirty days prior to the
- 5 first day of a scheduled dispute resolution session;
- 6 (7) Contact information for all [~~local~~] approved housing
- 7 counselors;
- 8 (8) Contact information for all [~~local~~] approved budget
- 9 and credit counselors; and
- 10 (9) Contact information for the department.

11 The notification shall be mailed to the subject property address  
 12 and any other addresses for the mortgagor as provided in the  
 13 mortgagee's notice of dispute resolution under [†]section[†] 667  
 14 75 and the foreclosure notice under section [~~667-5-01~~] 667-  
 15 22(a)."

16 SECTION 43. Section 667-78, Hawaii Revised Statutes, is  
 17 amended as follows:

- 18 1. By amending subsection (a) to read:
- 19 "(a) An owner-occupant elects to participate in the
- 20 mortgage foreclosure dispute resolution program by returning to
- 21 the department:



- 1 (1) The completed program election form provided  
2 [pursuant]:  
3 (A) Pursuant to section 667-77(2); or  
4 (B) On a website maintained by the department;
- 5 (2) Certification under penalty of perjury that the  
6 mortgagor is an owner-occupant, accompanied with any  
7 supporting documentation, including copies of recent  
8 utility billing statements, voter registration  
9 records, real estate property tax records, or state  
10 identification forms; and
- 11 (3) A program fee of \$300.

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

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

16 "(c) If the owner-occupant does not elect to participate  
17 in dispute resolution pursuant to this part, the department  
18 shall notify the mortgagee within ten days of receiving an  
19 election form indicating nonelection or the termination of the  
20 thirty-day time period for election. After receiving the  
21 department's notification, the mortgagee may proceed with the  
22 nonjudicial foreclosure process according to the process



1 provided in [~~part I or~~] part II of this chapter[, as  
2 applicable]."

3 SECTION 44. Section 667-79, Hawaii Revised Statutes, is  
4 amended as follows:

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

6 "(a) If an owner-occupant elects to participate in the  
7 mortgage foreclosure dispute resolution program, the department  
8 shall open a dispute resolution case. Within twenty days of  
9 receipt of the owner-occupant's election form and fee in  
10 accordance with section 667-78, the department shall mail  
11 written notification of the case opening to the parties and, if  
12 applicable, the condominium or other homeowner association of  
13 the project where the owner-occupant's property is located, by  
14 registered mail, return receipt requested, which shall include:

- 15 (1) Notification of the date, time, and location of the  
16 dispute resolution session;
- 17 (2) An explanation of the dispute resolution process;
- 18 (3) Information about the dispute resolution program  
19 requirements; and
- 20 (4) Consequences and penalties for noncompliance.

21 The dispute resolution session shall be scheduled for a date no  
22 less than [~~thirty~~] forty and no more than [~~sixty~~] seventy days



1 from the date of the notification of case opening, unless  
2 mutually agreed to by the parties and the neutral."

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

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

9 SECTION 45. Section 667-80, Hawaii Revised Statutes, is  
10 amended as follows:

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

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

16 (1) A representative of the mortgagee who participates in  
17 the dispute resolution shall be authorized to  
18 negotiate a loan modification on behalf of the  
19 mortgagee or shall have, at all stages of the dispute  
20 resolution process, direct access by telephone,  
21 videoconference, or other immediately available  
22 contemporaneous telecommunications medium to a person



1 who is so authorized;

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

4 (3) The owner-occupant may be assisted by an approved  
5 housing counselor or approved budget and credit  
6 counselor."

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

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

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

14 (A) A copy of the promissory note, signed by the  
15 mortgagor, including any endorsements, allonges,  
16 amendments, or riders to the note evidencing the  
17 mortgage debt;

18 (B) A copy of the mortgage document and any  
19 amendments, riders, or other documentation  
20 evidencing the mortgagee's right of nonjudicial  
21 foreclosure and interest in the property  
22 including any interest as a successor or



- 1 assignee; and
- 2 (C) Financial records and correspondence that confirm
- 3 the mortgage loan is in default.
- 4 (2) The owner-occupant shall provide to the department and
- 5 the mortgagee:
  - 6 (A) Documentation showing income qualification for a
  - 7 loan modification, including any copies of pay
  - 8 stubs, W-2 forms, social security or disability
  - 9 income, retirement income, child support income,
  - 10 or any other income that the owner-occupant deems
  - 11 relevant to the owner-occupant's financial
  - 12 ability to repay the mortgage;
  - 13 (B) Any records or correspondence available which may
  - 14 dispute that the mortgage loan is in default;
  - 15 (C) Any records or correspondence available
  - 16 evidencing a loan modification or amendment;
  - 17 (D) Any records or correspondence available that
  - 18 indicate the parties are currently engaged in
  - 19 bona fide negotiations to modify the loan or
  - 20 negotiate a settlement of the delinquency;
  - 21 (E) Names and contact information for approved
  - 22 housing counselors, approved budget and credit





1                   counselors, or representatives of the mortgagee,  
2                   with whom the owner-occupant may have or is  
3                   currently working with to address the  
4                   delinquency; and

5                   (F) Verification of counseling by an approved housing  
6                   counselor or approved budget and credit  
7                   counselor."

8                   SECTION 46. Section 667-81, Hawaii Revised Statutes, is  
9                   amended by amending subsections (b), (c), and (d) to read as  
10                  follows:

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



1 deadline date to cure default in an amended foreclosure notice.  
2 Nothing in this subsection shall be construed to require the  
3 neutral to wait the full sixty days allotted for dispute  
4 resolution to determine that the parties were unable to reach an  
5 agreement and file a report.

6 (c) If the parties have complied with the requirements of  
7 this part and have reached an agreement, the agreement shall be  
8 memorialized in [~~a settlement document~~] writing and signed by  
9 the parties or their authorized representatives. [~~If the~~  
10 ~~parties or their authorized representatives participate in the~~  
11 ~~dispute resolution session in person, the settlement document~~  
12 ~~shall be signed in the presence of the neutral. If any of the~~  
13 ~~parties or their authorized representatives participate in the~~  
14 ~~dispute resolution through telephone, videoconference, or other~~  
15 ~~immediately available contemporaneous telecommunications medium,~~  
16 ~~the settlement document shall be signed and returned to the~~  
17 ~~neutral no later than ten days after the conclusion of the~~  
18 ~~dispute resolution session.] The parties shall be responsible  
19 for drafting any agreement reached[, and for filing or recording  
20 with the land court or the bureau of conveyances, as  
21 appropriate,] and enforcing the [~~settlement document.~~]  
22 agreement. [~~The neutral shall file the settlement document with~~~~



1 ~~the neutral's closing report.]~~ The [~~settlement document~~]  
2 agreement shall be a contract between the parties and shall be  
3 enforceable in a private contract action in a court of  
4 appropriate jurisdiction in the event of breach by either party.  
5 If the [~~settlement document~~] agreement allows for foreclosure or  
6 other transfer of the subject property, the stay of the  
7 foreclosure under section 667-83 shall be released upon [~~filing~~  
8 ~~or recording~~] the [~~settlement document~~] recordation of the  
9 neutral's closing report [~~with the land court or bureau of~~  
10 ~~conveyances, as appropriate~~]. Thereafter, the office of the  
11 assistant registrar of the land court or bureau of conveyances  
12 may record a notice of sale or other conveyance document, as  
13 appropriate.

14 (d) If the parties to a dispute resolution process reach  
15 an agreement which resolves the matters at issue in the dispute  
16 resolution before the first day of the scheduled dispute  
17 resolution session scheduled pursuant to this section, the  
18 parties shall notify the neutral by that date. The neutral  
19 shall thereafter issue a closing report that the parties have  
20 reached an agreement prior to the commencement of a dispute  
21 resolution session. If the agreement provides for foreclosure,  
22 the parties shall memorialize the agreement in a writing signed



1 by both parties [~~and provided to the neutral. Any agreement~~  
2 ~~authorizing foreclosure shall be attached to the neutral's~~  
3 ~~closing report~~]. The parties may [~~file or~~] record the report  
4 [~~at the bureau of conveyances or the land court, as~~  
5 ~~appropriate~~]. If the agreement authorizes foreclosure, the stay  
6 of the foreclosure under section 667-83 shall be released upon  
7 [~~filing or recording with the land court or bureau of~~  
8 ~~conveyances, as appropriate.~~] the recordation of the report.  
9 Thereafter, the land court or bureau of conveyances may record a  
10 notice of sale or other conveyance document, as appropriate. No  
11 fees shall be refunded if the parties come to an agreement prior  
12 to a dispute resolution session conducted pursuant to this  
13 part."

14 SECTION 47. Section 667-82, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) The neutral's closing report shall indicate if the  
17 mortgagee or the owner-occupant failed to comply with  
18 requirements of the mortgage foreclosure dispute resolution  
19 program.

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

22 (A) Participation in dispute resolution without the



1 authority to negotiate a loan modification or  
2 without access at all stages of the dispute  
3 resolution process to a person who is so  
4 authorized;

5 (B) Failure to provide the required information or  
6 documents;

7 (C) Refusal to cooperate or participate in dispute  
8 resolution; or

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

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

13 (A) Failure to provide the required information or  
14 documents; or

15 (B) Refusal to cooperate or participate in dispute  
16 resolution[-];

17 provided that failure by the mortgagee and the owner-  
18 occupant to reach an agreement to resolve the dispute  
19 shall not constitute failure by the mortgagee or the  
20 owner-occupant to comply with the requirements of the  
21 mortgage foreclosure dispute resolution program."

22 SECTION 48. Section 667-83, Hawaii Revised Statutes, is



1 amended by amending subsection (a) to read as follows:

2       "(a) The written notification of a case opening under  
3 section 667-79 shall operate as a stay of the foreclosure  
4 proceeding[~~7~~] and may be [~~filed or~~] recorded[~~7 as appropriate,~~  
5 ~~at the land court or bureau of conveyances.~~]; provided that:

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

10       (2) The written notification shall not act as a stay on a  
11       foreclosure proceeding for the purpose of the date by  
12       which the default must be cured pursuant to section  
13       667-22(a)(6)."

14       SECTION 49. Section 667-86, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

16       "(b) All persons who record an affidavit in the office of  
17 the assistant registrar of the land court, pursuant to section  
18 501-118, or who record a conveyance document in the bureau of  
19 conveyances for an owner-occupied property subject to a  
20 nonjudicial power of sale foreclosure shall pay a fee of \$100,  
21 which shall be deposited into the mortgage foreclosure dispute  
22 resolution special fund on a quarterly basis."



## PART IV

SECTION 50. Act 48, Session Laws of Hawaii 2011, is amended by amending section 45 to read as follows:

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

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

~~[(2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be 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~~



1         ~~Statutes, shall be transferred to the compliance~~  
 2         ~~resolution fund established under section 26-9(o),~~  
 3         ~~Hawaii Revised Statutes.] "~~

4                                 PART V

5         SECTION 51. Section 667-5, Hawaii Revised Statutes, is  
 6         repealed.

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

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

19        ~~(A) By serving, not less than twenty one days before~~  
 20        ~~the date of sale, written notice of intent to~~  
 21        ~~foreclose on all persons entitled to notice under~~  
 22        ~~this part in the same manner as service of a~~





1 ~~civil complaint under chapter 634 and the Hawaii~~  
2 ~~rules of civil procedure; provided that in the~~  
3 ~~case of nonjudicial foreclosure of a lien by an~~  
4 ~~association against a mortgagor who is not an~~  
5 ~~owner occupant, the association shall mail the~~  
6 ~~notice by certified or registered mail, not less~~  
7 ~~than twenty one days before the date of sale, to:~~

8 ~~(i) The unit owner at the address shown in the~~  
9 ~~records of the association and, if~~  
10 ~~different, at the address of the unit being~~  
11 ~~foreclosed; and~~

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

14 ~~(B) By publication of the notice once in each of~~  
15 ~~three successive weeks, constituting three~~  
16 ~~publications with the last publication to be not~~  
17 ~~less than fourteen days before the day of sale,~~  
18 ~~in a daily newspaper having the largest general~~  
19 ~~circulation in the specific county in which the~~  
20 ~~mortgaged property lies; provided that for~~  
21 ~~property located in a county with a population of~~  
22 ~~more than one hundred thousand but less than~~



1 ~~three hundred thousand, the public notice shall~~  
2 ~~be published in the newspaper having the largest~~  
3 ~~circulation expressly in the eastern or western~~  
4 ~~half of the county, corresponding to the location~~  
5 ~~of the subject property;~~

6 ~~(2) Give notice of the mortgagor's right to elect to~~  
7 ~~participate in the mortgage foreclosure dispute~~  
8 ~~resolution program pursuant to section 667-75 or to~~  
9 ~~convert the nonjudicial power of sale foreclosure to a~~  
10 ~~judicial foreclosure pursuant to section 667-53; and~~

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

13 ~~(b) Copies of the notice required under subsection (a)~~

14 ~~shall be:~~

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

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

18 ~~(c) Upon the request of any person entitled to notice~~  
19 ~~pursuant to this section and sections 667-5.5 and 667-6, the~~  
20 ~~attorney, the mortgagee, successor, or person represented by the~~  
21 ~~attorney shall disclose to the requestor the following~~  
22 ~~information:~~



1       ~~(1) The amount to cure the default, together with the~~  
2           ~~estimated amount of the foreclosing mortgagee's~~  
3           ~~attorneys' fees and costs, and all other fees and~~  
4           ~~costs estimated to be incurred by the foreclosing~~  
5           ~~mortgagee related to the default prior to the auction~~  
6           ~~within five business days of the request; and~~  
7       ~~(2) The sale price of the mortgaged property once~~  
8           ~~auctioned.~~

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

22       ~~(e) The mortgagee or other person, excluding an~~



1 ~~association, who completes the nonjudicial foreclosure of a~~  
2 ~~mortgage or other lien on residential property pursuant to this~~  
3 ~~part shall not be entitled to pursue or obtain a deficiency~~  
4 ~~judgment against an owner occupant of the residential property~~  
5 ~~who, at the time the notice of intent to foreclose is served,~~  
6 ~~does not have a fee simple or leasehold ownership interest in any~~  
7 ~~other real property.~~

8 ~~Nothing in this section shall prohibit any other mortgagee~~  
9 ~~or person who holds a lien on the residential property subject to~~  
10 ~~the nonjudicial foreclosure, whose lien is subordinate to the~~  
11 ~~mortgage being foreclosed and is extinguished by the nonjudicial~~  
12 ~~foreclosure sale, from pursuing a monetary judgment against an~~  
13 ~~owner occupant.~~

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

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

20 SECTION 52. Section 667-5.7, Hawaii Revised Statutes, is  
21 repealed.



1       ~~["§667-5.7] Public sale. At any public sale pursuant to~~  
2 ~~section 667-5, the successful bidder at the public sale, as the~~  
3 ~~purchaser, shall not be required to make a downpayment to the~~  
4 ~~foreclosing mortgagee of more than ten per cent of the highest~~  
5 ~~successful bid price."]~~

6       SECTION 53. Section 667-6, Hawaii Revised Statutes, is  
7 repealed.

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



1 ~~mortgage creditor, or its authorized representative, desiring to~~  
2 ~~receive notice, specifying the name and address of the person to~~  
3 ~~whom the notice is to be mailed. The mortgagee receiving the~~  
4 ~~request shall thereafter give notice to all mortgage creditors~~  
5 ~~who have timely submitted their request. The notice shall be~~  
6 ~~sent by mail or otherwise communicated to the mortgage~~  
7 ~~creditors, not less than seven calendar days prior to the date~~  
8 ~~of sale.~~

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

16 SECTION 54. Section 667-7, Hawaii Revised Statutes, is  
17 repealed.

18 [~~§667-7 Notice, contents; affidavit.~~ (a) ~~The notice of~~  
19 ~~intention of foreclosure shall contain:~~

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



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

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

7       SECTION 55. Section 667-8, Hawaii Revised Statutes, is  
8       repealed.

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

17       SECTION 56. Section 667-14, Hawaii Revised Statutes, is  
18       repealed.

19       ~~["[§667-14] Recordation of foreclosure notice. The~~  
20       ~~foreclosing mortgagee may record a copy of the foreclosure~~  
21       ~~notice with the assistant registrar of the land court or the~~  
22       ~~bureau of conveyances, as appropriate, in a manner similar to~~



1 ~~recording of notices of pendency of action under section 501-~~  
 2 ~~151 or section 634-51, as applicable. The recorded notice shall~~  
 3 ~~have the same effect as a notice of pendency of action. From~~  
 4 ~~and after the recording of the notice, any person who becomes~~  
 5 ~~a purchaser or encumbrancer of the mortgaged property shall be~~  
 6 ~~deemed to have constructive notice of the power of sale~~  
 7 ~~foreclosure and shall be bound by the foreclosure.] "~~

8 SECTION 57. Section 667-15, Hawaii Revised Statutes, is  
 9 repealed.

10 ["~~§667-15~~ ~~Location of public sale following power of~~  
 11 ~~sale foreclosure.~~ The public sale of the mortgaged property  
 12 shall be held only on grounds or at facilities under the  
 13 administration of the State, as follows:

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

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

19 (3) ~~At a state facility in Kailua-Kona, for a public sale~~  
 20 ~~of mortgaged property located in the western portion~~  
 21 ~~of the county of Hawaii;~~

22 (4) ~~At a state facility in the county seat of Maui, for a~~





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

11           SECTION 58. Section 667-21.6, Hawaii Revised Statutes, is  
12          repealed.

13           ~~["[§667-21.6] Foreclosure of association lien; cure of~~  
14          ~~default. If a unit owner notifies the association or its~~  
15          ~~attorney by certified mail return receipt requested or by hand-~~  
16          ~~delivery within five business days following a response to the~~  
17          ~~unit owner's request for the amount to cure a default, together~~  
18          ~~with an estimated amount of the foreclosing association's~~  
19          ~~attorneys' fees and costs, and all other fees and costs related~~  
20          ~~to the default estimated to be incurred by the foreclosing~~  
21          ~~association, that it intends to cure the default, the~~  
22          ~~association shall allow sixty calendar days to the unit owner to~~



1 ~~cure the default. The association shall not reject a reasonable~~  
2 ~~payment plan for cure of the default; provided that a reasonable~~  
3 ~~plan shall require the owner to pay at a minimum the current~~  
4 ~~maintenance fee and some amount owed on the past due balance.~~  
5 ~~From and after the date that the unit owner gives written notice~~  
6 ~~to the association of its intent to cure the delinquency, any~~  
7 ~~nonjudicial foreclosure of the lien shall be stayed pending the~~  
8 ~~sixty day period or a longer period that is agreed upon by the~~  
9 ~~parties." ]~~

10 SECTION 59. Section 667-50, Hawaii Revised Statutes, is  
11 repealed.

12 [~~["§667-50] Definitions. For purposes of this chapter,~~  
13 ~~"foreclosure notice" shall mean notice of intention to foreclose~~  
14 ~~given pursuant to section 667-5 or notice of default and~~  
15 ~~intention to foreclose prepared pursuant to section 667-22." ]~~

16 SECTION 60. Section 667-61, Hawaii Revised Statutes, is  
17 repealed.

18 [~~["§667-61] Definitions. For the purposes of sections~~  
19 ~~667-62 to 667-65, "time share interest" shall have the same~~  
20 ~~meaning as in section 514E-1." ]~~

21 SECTION 61. Section 667-72, Hawaii Revised Statutes, is  
22 repealed.



1           ~~["§667-72] Definitions. As used in this part:~~

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

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

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

15           ~~"Department" means the department of commerce and consumer~~  
16 ~~affairs.~~

17           ~~"Director" means the director of commerce and consumer~~  
18 ~~affairs.~~

19           ~~"Dispute resolution" means a facilitated negotiation~~  
20 ~~between a mortgagor and mortgagee for the purpose of reaching an~~  
21 ~~agreement for mortgage loan modification or other agreement in~~



1 ~~an attempt to avoid foreclosure or to mitigate damages if~~  
2 ~~foreclosure is unavoidable.~~

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

5 ~~"Mortgagor" has the same meaning as the term is defined in~~  
6 ~~section 667 21.~~

7 ~~"Neutral" means a person who is a dispute resolution~~  
8 ~~specialist assigned to facilitate the dispute resolution process~~  
9 ~~required by this part.~~

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

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

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

20 SECTION 62. In codifying the new sections added by  
21 sections 2 and 5 of this Act, the revisor of statutes shall



1 substitute appropriate section numbers for the letters used in  
2 designating the new sections in this Act.

3 SECTION 63. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 64. This Act shall take effect on June 30, 2012;  
6 provided that:

7 (1) Section 6 of this Act, amending section 454M-5, Hawaii  
8 Revised Statutes, shall take effect on July 1, 2012;

9 and

10 (2) Section 27 of this Act, amending section 667-41,  
11 Hawaii Revised Statutes, shall take effect on  
12 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. (SD1)

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

