
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
21 constitute a lien on the unit. The priority of the
22 association's lien shall, except as otherwise provided by law,



1 be as provided in the association documents or, if no priority
2 is provided in the association documents, by the recordation
3 date of the liens; provided that any amendment to the
4 association documents that governs the priority of liens on the
5 unit shall not provide that an association lien shall have
6 priority over a mortgage lien that is recorded before the
7 amendment is recorded. A lien recorded by the association shall
8 expire two years from the date of recordation.

9 The lien of the association may be foreclosed by action or
10 by nonjudicial or power of sale foreclosure procedures set forth
11 in chapter 667, by the managing agent or board, acting on behalf
12 of the association and in the name of the association; provided
13 that no association may foreclose a lien against any unit that
14 arises solely from fines, penalties, legal fees, or late fees.
15 In any association foreclosure, the unit owner shall be required
16 to pay a reasonable rental for the unit, if so provided in the
17 association documents or the law, and the plaintiff in the
18 foreclosure shall be entitled to the appointment of a receiver
19 to collect the rental owed by the unit owner or any tenant of
20 the unit. If the association is the plaintiff, it may request
21 that its managing agent be appointed as receiver to collect the
22 rental from the tenant. The managing agent or board, acting on



1 behalf of the association and in the name of the association,
2 may bid on the unit at foreclosure sale and acquire and hold,
3 lease, mortgage, and convey the unit thereafter as the board
4 deems reasonable. Action to recover a money judgment for unpaid
5 assessments shall be maintainable without foreclosing or waiving
6 the lien securing the unpaid assessments owed.

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

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



1 (2) Sixty days after the hearing at which the court grants
2 the motion to confirm the sale to the purchaser;
3 (3) Thirty days after the public sale in a nonjudicial
4 power of sale foreclosure conducted pursuant to
5 chapter 667; or
6 (4) Upon the recording of the instrument of conveyance;
7 whichever occurs first; provided that the mortgagee of record or
8 other purchaser of the unit shall not be deemed to acquire title
9 under paragraph (1), (2), or (3), if transfer of title is
10 delayed past the thirty-six days specified in paragraph (1), the
11 sixty days specified in paragraph (2), or the thirty days
12 specified in paragraph (3), when a person (other than the
13 mortgagee of record or other purchaser of the unit) who appears
14 at the hearing on the motion or a party to the foreclosure
15 action (other than the mortgagee of record or other purchaser of
16 the unit) requests reconsideration of the motion or order to
17 confirm sale, objects to the form of the proposed order to
18 confirm sale, appeals the decision of the court to grant the
19 motion to confirm sale, or the debtor or mortgagor declares
20 bankruptcy or is involuntarily placed into bankruptcy. In any
21 such case, the mortgagee of record or other purchaser of the



1 unit shall be deemed to acquire title upon recordation of the
2 instrument of conveyance.

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

- 7 (1) The amount of regular and special assessments included
8 in the assessment, including the due date of each
9 amount claimed;
- 10 (2) The amount of any penalty, late fee, lien filing fee,
11 and any other charge included in the assessment;
- 12 (3) The amount of attorneys' fees and costs, if any,
13 included in the assessment;
- 14 (4) That under Hawaii law, a unit owner has no right to
15 withhold assessments for any reason;
- 16 (5) That a unit owner has a right to demand mediation to
17 resolve disputes about the amount or validity of an
18 association's assessment; provided that the unit owner
19 immediately pays the assessment in full and keeps
20 assessments current; and



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

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

7 (d) A unit owner who pays an association the full amount
8 claimed by the association may file a claim against the
9 association in court, including small claims court, or require
10 the association to mediate under section 421J-13 to resolve any
11 disputes concerning the amount or validity of the association's
12 claim. If the unit owner and the association are unable to
13 resolve the dispute through mediation, either party may file for
14 relief with a court; provided that a unit owner may only file
15 for relief in court if all amounts claimed by the association
16 are paid in full on or before the date of filing. If the unit
17 owner fails to keep all association assessments current during
18 the court hearing, the association may ask the court to
19 temporarily suspend the proceedings. If the unit owner pays all
20 association assessments within thirty days of the date of
21 suspension, the unit owner may ask the court to recommence the
22 proceedings. If the unit owner fails to pay all association



1 assessments by the end of the thirty-day period, the association
2 may ask the court to dismiss the proceedings. The unit owner
3 shall be entitled to a refund of any amounts paid to the
4 association that are not owed.

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

16 (f) Before the board or managing agent may take the
17 actions permitted under subsection (e), the board shall adopt a
18 written policy providing for such actions and have the policy
19 approved by a majority vote of the unit owners, as provided in
20 the association documents, who are present in person or by proxy
21 or as otherwise permitted by the association documents, at an
22 annual or special meeting of the association or by the written



1 consent of a voting interest equal to a quorum of the unit
2 owners unless the association documents already permit the
3 process.

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

9 (1) A purchaser who holds a mortgage on a delinquent unit,
10 which mortgage is not subordinate to the priority of
11 lien by the association, and who acquires the
12 delinquent unit through a judicial or nonjudicial
13 foreclosure proceeding, including purchasing the
14 delinquent unit at a foreclosure auction, shall not be
15 obligated to make, nor be liable for, payment of the
16 special assessment as provided for under this
17 subsection; and

18 (2) A person who subsequently purchases the delinquent
19 unit from the mortgagee referred to in paragraph (1)
20 shall be obligated to make, and shall be liable for,
21 payment of the special assessment provided for under
22 this subsection; and provided further that the



1 mortgagee or subsequent purchaser may require the
2 association to provide, at no charge, a notice of the
3 association's intent to claim a lien against the
4 delinquent unit for the amount of the special
5 assessment, prior to the subsequent purchaser's
6 acquisition of title to the delinquent unit. The
7 notice shall state the amount of the special
8 assessment, how that amount was calculated, and the
9 legal description of the unit.

10 (h) The amount of the special assessment assessed under
11 subsection (g) shall not exceed the total amount of unpaid
12 regular periodic assessments that were assessed during the six
13 months immediately preceding the completion of the judicial or
14 nonjudicial power of sale foreclosure.

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

17 "Completion" means:

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

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



- 1 "Regular periodic assessments" does not include:
- 2 (1) Any special assessment, except for a special
- 3 assessment imposed on all units as part of a budget
- 4 adopted pursuant to the association documents;
- 5 (2) Late charges, fines, or penalties;
- 6 (3) Interest assessed by the association;
- 7 (4) Any lien arising out of the assessment; or
- 8 (5) Any fees or costs related to the collection or
- 9 enforcement of the assessment, including attorneys'
- 10 fees and court costs.

11 **§421J-B Association fiscal matters; collection of unpaid**

12 **assessments from tenants or rental agents.** (a) If a unit owner

13 rents or leases the unit and is in default for thirty days or

14 more in the payment of the unit's share of the regular

15 assessments, the board, for as long as the default continues,

16 may demand in writing and receive each month, or any other

17 period of time for rental payment as provided in the lease, from

18 any tenant occupying the unit or rental agent renting the unit,

19 an amount sufficient to pay all sums due from the unit owner to

20 the association, including interest, if any, but the amount

21 shall not exceed the tenant's rent due at the time of demand.

22 The tenant's payment under this section shall discharge that



1 amount of payment from the tenant's rent obligation, and any
2 contractual provision to the contrary shall be void as a matter
3 of law.

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

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

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

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

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

15 (d) The payment of any portion of the unit's share of
16 regular assessments by the tenant pursuant to a written demand
17 by the board is a complete defense, to the extent of the amount
18 demanding and paid by the tenant, in an action for nonpayment of
19 rent brought by the unit owner against a tenant.

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



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

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

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

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

16 (g) Before the board may take the actions permitted under
17 subsection (a), the board shall adopt a written policy providing
18 for the actions and have the policy approved by a majority vote
19 of the unit owners, as provided in the association documents,
20 who are present in person or by proxy or as otherwise permitted
21 by the association documents, at an annual or special meeting of
22 the association or by the written consent of a voting interest



1 equal to a quorum of the unit owners unless the association
2 documents already permit the process.

3 **§421J-C Release of recorded liens of units by**

4 **associations.** (a) Any association that records a lien on a
5 unit at the bureau of conveyance or the office of the assistant
6 registrar of the land court, or both, shall provide to the unit
7 owner a release of the recorded lien upon full satisfaction of
8 the recorded lien and discharge of any secured debt. The
9 instrument for the release of the recorded lien shall:

10 (1) Be duly acknowledged;

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

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

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

21 (1) Any title insurer or underwritten title company as
22 defined in section 431:20-102 may execute the release



1 of the recorded lien on behalf of the unit owner;

2 provided that:

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

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

11 If an association's recorded lien is released by a
12 title insurer or underwritten title company pursuant
13 to this subsection but the secured debt has not been
14 discharged, the recorded lien has not been fully
15 satisfied, and the title insurer or underwritten title
16 company acted with gross negligence or in bad faith in
17 releasing the lien, the title insurer or underwritten
18 title company releasing the recorded lien shall be
19 liable to the association for treble damages and
20 reasonable attorneys' fees and costs; or

21 (2) The unit owner or a company issuing title insurance to
22 a new owner of the unit, or the escrow company charged



1 by the unit owner with obtaining the release of the
2 recorded lien, or any other interested party, as
3 plaintiff, may institute an action in any circuit
4 court to obtain the release of the recorded lien;
5 provided that:

6 (A) The plaintiff in the action shall mail a copy of
7 the complaint to the association by certified or
8 registered mail addressed to the association at
9 its last known address;

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

21 (C) Upon a finding of good cause by the court, the
22 plaintiff shall be entitled to treble damages and



1 reasonable attorneys' fees and costs incurred in
2 the action unless the court finds that the
3 association had a reasonable basis for believing
4 that a dispute existed regarding whether the
5 recorded lien should have been released."

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

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

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

18 "§514A- Release of recorded liens of apartments by
19 associations. (a) Any association of apartment owners that
20 records a lien on an apartment at the bureau of conveyance or
21 the office of the assistant registrar of the land court, or
22 both, shall provide to the apartment owner a release of the



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

4 (1) Be duly acknowledged;

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

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

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

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

20 (A) The release shall have attached to it an
21 affidavit setting forth proof, such as a canceled
22 check or written confirmation from the apartment



1 owner, that reasonably establishes that the
2 secured debt has been discharged and the
3 association of apartment owners has been fully
4 satisfied; and

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

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

18 (2) The apartment owner or a company issuing title
19 insurance to a new owner of the apartment, or the
20 escrow company charged by the apartment owner with
21 obtaining the release of the recorded lien, or any
22 other interested party, as plaintiff, may institute an



1 action in any circuit court to obtain the release of
2 the recorded lien; provided that:

3 (A) The plaintiff in the action shall mail a copy of
4 the complaint to the association of apartment
5 owners by certified or registered mail addressed
6 to the association of apartment owners at its
7 last known address;

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

20 (C) Upon a finding of good cause by the court, the
21 plaintiff shall be entitled to treble damages and
22 reasonable attorneys' fees and costs incurred in



1 the action unless the court finds that the
2 association of apartment owners had a reasonable
3 basis for believing that a dispute existed
4 regarding whether the recorded lien should have
5 been released."

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

9 "**§514B- Release of recorded liens of units by**
10 **associations.** (a) Any association that records a lien on a
11 unit at the bureau of conveyance or the office of the assistant
12 registrar of the land court, or both, shall provide to the unit
13 owner a release of the recorded lien upon full satisfaction of
14 the recorded lien and discharge of any secured debt. The
15 instrument for the release of the recorded lien shall:
16 (1) Be duly acknowledged;
17 (2) Sufficiently describe the recorded lien that has been
18 satisfied; and
19 (3) Be recordable in the bureau of conveyances or office
20 of the assistant registrar of the land court, or both,
21 as appropriate.



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

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

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

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

18 If an association's recorded lien is released by a
19 title insurer or underwritten title company pursuant
20 to this subsection but the secured debt has not been
21 discharged, the recorded lien has not been fully
22 satisfied, and the title insurer or underwritten title



1 company acted with gross negligence or in bad faith in
2 releasing the lien, the title insurer or underwritten
3 title company releasing the recorded lien shall be
4 liable to the association for treble damages and
5 reasonable attorneys' fees and costs; or

6 (2) The unit owner or a company issuing title insurance to
7 a new owner of the unit, or the escrow company charged
8 by the unit owner with obtaining the release of the
9 recorded lien, or any other interested party, as
10 plaintiff, may institute an action in any circuit
11 court to obtain the release of the recorded lien;
12 provided that:

13 (A) The plaintiff in the action shall mail a copy of
14 the complaint to the association by certified or
15 registered mail addressed to the association at
16 its last known address;

17 (B) If the association does not file an answer to the
18 complaint within forty-five days after the
19 mailing, the court, upon receipt of an affidavit
20 of mailing required by this section and upon
21 satisfactory proof that the secured debt has been
22 discharged and the lien has been fully satisfied,



1 shall issue an order releasing the lien recorded
 2 by the association, which order shall be recorded
 3 in the bureau of conveyances or office of the
 4 assistant registrar of the land court, or both,
 5 as appropriate; and

6 (C) Upon a finding of good cause by the court, the
 7 plaintiff shall be entitled to treble damages and
 8 reasonable attorneys' fees and costs incurred in
 9 the action unless the court finds that the
 10 association had a reasonable basis for believing
 11 that a dispute existed regarding whether the
 12 recorded lien should have been released."

13 SECTION 5. Chapter 667, Hawaii Revised Statutes, is
 14 amended as follows:

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

17 **"PART [~~I~~] IA. FORECLOSURE BY ACTION [~~OR~~**
 18 **~~FORECLOSURE BY POWER OF SALE]~~"**

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

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

21 **"[~~]~~PART II. [~~]~~~~—ALTERNATE]~~ POWER OF SALE FORECLOSURE**
 22 **PROCESS"**



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

2 **"PART I. GENERAL PROVISIONS**

3 **§667-1 Definitions.** As used in this chapter:

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

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

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

18 "Association" has the same meaning as defined in sections
19 421J-2 and 514B-3.

20 "Association documents" has the same meaning as defined in
21 section 421J-2 and includes the "declaration" defined in section



1 514B-3 and the "bylaws" described in section 514B-108,
2 respectively.

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

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

7 "Department" means the department of commerce and consumer
8 affairs.

9 "Director" means the director of commerce and consumer
10 affairs.

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

3 "Serve", when referring to providing notice of intention to
4 foreclose or notice of default and intention to foreclose
5 pursuant to a nonjudicial foreclosure, means to have service of
6 the notice of default and intention to foreclose made in
7 accordance with the service of process or the service of summons
8 under the Hawaii rules of civil procedure and under sections
9 634-35 and 634-36, excluding however, any return or affidavit of
10 service obligations required therein.

11 "Time share interest" has the same meaning as in section
12 514E-1.

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

15 "Unit owner" has the same meaning as "member" in section
16 421J-2 and "unit owner" in section 514B-3."

17 5. By adding a new part to be appropriately designated and
18 to read:

19 **"PART . ASSOCIATION ALTERNATE POWER OF SALE**
20 **FORECLOSURE PROCESS**

21 **§667-A Alternate power of sale process.** The power of sale
22 process in this part is an alternative process for associations



1 to the foreclosure by action in part IA and the foreclosure by
2 power of sale in part II.

3 **§667-B Notice of default and intention to foreclose;**
4 **contents; distribution; alternative remedies for failure to**
5 **serve.** (a) When a unit owner has failed to pay an assessment,
6 and when the association intends to conduct a power of sale
7 foreclosure under this part, the association shall prepare a
8 written notice of default and intention to foreclose addressed
9 to the unit owner. The notice of default and intention to
10 foreclose shall state:

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



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



1 association; provided that the attorney shall be
2 licensed to practice law in the State and physically
3 located in the State; and

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

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

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

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

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



1 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
2 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
3 REQUESTED."

4 (c) A unit owner may submit a payment plan within thirty
5 days after service of a notice of default and intention to
6 foreclose on the unit owner. The unit owner shall submit the
7 payment plan to the association or its attorney by certified
8 mail return receipt requested or by hand delivery. A unit owner
9 may also cure the default within sixty days after service of a
10 notice of default and intention to foreclose on the unit owner
11 by paying the association the full amount of the default,
12 including the foreclosing association's attorneys' fees and
13 costs, and all other fees and costs related to the default that
14 are incurred or estimated to be incurred by the foreclosing
15 association. The association shall not reject a reasonable
16 payment plan. From and after the date that the unit owner gives
17 written notice to the association of its intent to cure the
18 default or timely submits a payment plan, any nonjudicial
19 foreclosure of the lien shall be stayed during the sixty-day
20 period to cure the default or during the term of the payment
21 plan or a longer period that is agreed upon by the parties. A
22 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 667-5,~~] chapter 667 or
9 otherwise;
- 10 (8) A power of attorney given by the owner of a leasehold
11 time share interest or the vendor or vendee under an
12 agreement of sale for the sale of a leasehold time
13 share interest, a mortgagee or other lienor having a
14 mortgage or lien upon a leasehold time share interest,
15 or another party holding a claim or encumbrance
16 against or an interest in a leasehold time share
17 interest; or
- 18 (9) An instrument assigning, extending, continuing,
19 dissolving, discharging, releasing in whole or in
20 part, reducing, canceling, extinguishing, or otherwise
21 modifying or amending any of the foregoing
22 instruments."



1 SECTION 10. Section 501-263, Hawaii Revised Statutes, is
2 amended to read as follows:

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

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

15 (A) A mortgage;

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



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



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

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

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



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

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

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

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



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



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

- 15 (i) Any declaration annexing property to the
16 declaration;
- 17 (ii) Any declaration deannexing property from the
18 operation of the declaration; and
- 19 (iii) Any document, instrument, or paper amending,
20 supplementing, correcting, releasing, or
21 terminating any of the documents listed in
22 subparagraph (C)(i) or (ii), the declaration



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

3 SECTION 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 [~~or~~] 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 [~~by~~] 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 [~~and~~] 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[7] 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 ~~or 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[~~];~~ provided further that the
11 fees prescribed by subsection (b)(1a) shall be deposited by the
12 clerk of the circuit court as provided in section 667-53(a)(6).

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

15 **SCHEDULE**

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

22 (b) **PART I**



1 Action or proceeding, general:

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

4 (1a) Petition for conversion of nonjudicial
5 foreclosure to judicial foreclosure \$250

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

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

9 Trusts:

10 (4) Proceeding for (A) appointment of trustee; (B)
11 appointment of successor; (C) resignation of
12 trustee; (D) instructions; (E) approval of
13 investment; (F) approval of sale, mortgage,
14 lease, or other disposition of property; (G)
15 approval of compromise of claim, for each such
16 matter \$100

17 (5) Proceeding for (A) removal of trustee; (B) order
18 requiring accounting; (C) invalidation of action
19 taken by trustee; (D) termination of trust, for
20 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 subsections (a) and (b) 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 (b) The notice of default and intention to foreclose shall
6 also contain wording substantially similar to the following in
7 all capital letters and printed in not less than fourteen-point
8 font:

9 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE
10 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY
11 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
12 AND WITHOUT GOING TO COURT.

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

16 ~~[AFTER THE DEADLINE DATE IN THIS NOTICE, TWO~~
17 ~~PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE~~
18 ~~LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS~~
19 ~~(OWNERS) OF THE PROPERTY WHO ALSO CURRENTLY RESIDE AT~~
20 ~~THE PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS~~
21 ~~RESIDING AT THE PROPERTY AGREE TO ALLOW TWO OPEN~~
22 ~~HOUSES BY THE LENDER, THEY MUST SIGN A LETTER SHOWING~~



1 ~~THEY AGREE. THE SIGNED LETTER MUST BE SENT TO THIS~~
2 ~~OFFICE AT THE ADDRESS GIVEN IN THIS NOTICE.~~

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

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

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

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



1 REQUESTED."

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

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

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

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

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

16 (3) The state director of taxation;

17 (4) The director of finance of the county where the
18 mortgaged property is located;

19 (5) The department of commerce and consumer affairs, by
20 filing the notice with the department when required;

21 and

22 (6) Any other person entitled to receive notice under this



1 part."

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

4 "**§667-24 Cure of default.** (a) If the default is cured as
5 required by the notice of default and intention to foreclose, or
6 if the parties have reached [~~a settlement document,~~] an
7 agreement to resolve the nonjudicial foreclosure, the
8 foreclosing mortgagee shall rescind the notice of default and
9 intention to foreclose. Within fourteen days of the date of the
10 cure or [~~a settlement document reached by the parties,~~] an
11 agreement to resolve the nonjudicial foreclosure, the
12 foreclosing mortgagee shall so notify any person who was served
13 with the notice of default and intention to foreclose. If the
14 notice of default and intention to foreclose was recorded, a
15 release of the notice of default and intention to foreclose
16 shall be recorded.

17 (b) If the default is not cured as required by the notice
18 of default and intention to foreclose, the parties have not
19 reached [~~a settlement document pursuant to part V~~] an agreement
20 to resolve the nonjudicial foreclosure and no report of
21 noncompliance has been issued against the mortgagee under
22 section 667-82, and the mortgagor has not elected to convert the



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

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

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

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

13 (2) At a state facility in Hilo, for a public sale of
14 mortgaged property located in the [~~eastern portion of~~
15 ~~the county of Hawaii;~~] districts of Hamakua, north
16 Hilo, south Hilo, or Puna;

17 (3) At a state facility in Kailua-Kona, for a public sale
18 of mortgaged property located in the [~~western portion~~
19 ~~of the county of Hawaii;~~] districts of north Kohala,
20 south Kohala, north Kona, south Kona, or Kau;

21 (4) At a state facility in the county seat of Maui, for a
22 public sale of mortgaged property located in the



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

10 SECTION 22. Section 667-27, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsections (a) to read:

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

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

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

19 ~~-(3)]~~ (2) The unpaid balance of the moneys owed to the
20 mortgagee under the mortgage agreement;

21 ~~[(+4)]~~ (3) A description of the mortgaged property,
22 including the address and the tax map key number of



1 the mortgaged property;

2 ~~[(+5)]~~ (4) The name of the mortgagor and the borrower;

3 ~~[(+6)]~~ (5) The name of the foreclosing mortgagee;

4 ~~[(+7)]~~ (6) The name of any prior or junior creditors having

5 a recorded lien on the mortgaged property before the

6 recordation of the notice of default and intention to

7 foreclose under section 667-23;

8 ~~[(+8)]~~ (7) The name, the address in the State, and the

9 telephone number in the State of the person in the

10 State conducting the public sale; and

11 ~~[(+9)]~~ (8) The terms and conditions of the public sale~~[, and~~

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

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

14 "(d) The foreclosing mortgagee shall have the public

15 notice of the public sale [~~printed~~]:

16 (1) Printed in not less than seven-point font and

17 published in the classified section of a [~~daily~~]

18 newspaper [~~having the largest~~] of general circulation

19 [~~specifically~~] in the [~~county where the mortgaged~~

20 ~~property is located; provided that for property~~

21 ~~located in a county with a population of more than one~~

22 ~~hundred thousand but less than three hundred thousand,~~



1 ~~the public notice shall be published in the newspaper~~
2 ~~having the largest general circulation specifically in~~
3 ~~the western or eastern half of the county, as the case~~
4 ~~may be, in which the property is located.] real~~
5 property tax zone in which the mortgaged property is
6 located, as shown on the applicable county real
7 property tax maps kept by each respective county's
8 real property tax assessment division, except for the
9 county of Kalawao which shall be considered its own
10 geographic area for the purposes of this paragraph.

11 For the purposes of this paragraph, a newspaper is of
12 general circulation if the newspaper:

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

14 (B) Is distributed within the county where the
15 mortgaged property is located:

16 (i) At least weekly;

17 (ii) For a minimum of six months unless
18 interrupted by strike, natural disaster, or
19 act of war or terror; and

20 (iii) To a minimum of one per cent of the
21 residents of the county, as determined by



1 the last decennial United States census and
2 as verified by an independent audit.

3 A person may apply to the circuit court for an order
4 confirming a newspaper to be of general circulation
5 for purposes of this paragraph, which the court shall
6 grant upon proof of compliance with this paragraph.

7 The public notice shall be published once each week
8 for three consecutive weeks, constituting three
9 publications. The public sale shall take place no
10 sooner than fourteen days after the date of the
11 publication of the third public notice advertisement;

12 or

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

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

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



- 1 (1) Announced by the foreclosing mortgagee at the date,
- 2 time, and place of the last scheduled public sale~~[-]~~;
- 3 and
- 4 (2) Provided to any other person who is entitled to
- 5 receive the notice of default under section 667-22."

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

8 "(b) The recitals in the affidavit required under
 9 subsection (a) may, but need not, be substantially in the
 10 following form:

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

18 (2) The foreclosing mortgagee is a [~~"foreclosing~~
 19 mortgagee"] mortgagee as defined in [~~the power of sale~~
 20 ~~foreclosure law;~~] section 667-1, Hawaii Revised
 21 Statutes, conducting a power of sale foreclosure;

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



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

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

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



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

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

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

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

19 (E) A public notice of the public sale was initially
20 published in the classified section of the
21 _____, [~~a daily newspaper of~~
22 ~~general circulation in the county where the~~



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

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

16 _____ . The public notice was sent
 17 on the following dates and in the following
 18 manner: _____. Those dates were
 19 after the deadline date in the notice of default
 20 and intention to foreclose, and those dates were
 21 at least sixty days before the date of the public
 22 sale;



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

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

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

18 [~~(J)~~] (I) At the time the public sale was held, the
19 default was not cured and there was no circuit
20 court foreclosure action pending in the circuit
21 where the mortgaged property is located; and

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



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

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

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

14 "**§667-37 Judicial action of foreclosure before public**
15 **sale.** This part shall not prohibit [~~the borrower,~~] the
16 foreclosing mortgagee, or any other creditor having a recorded
17 lien on the mortgaged property before the recordation of the
18 notice of default under section 667-23, from filing an action
19 for the judicial foreclosure of the mortgaged property in the
20 circuit court of the circuit where the mortgaged property is
21 located[-]; provided that the action is filed before the public
22 sale is held. The power of sale foreclosure process shall be



1 stayed during the pendency of the circuit court foreclosure
2 action."

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

5 "**§667-41 Public information notice requirement.**

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



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

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



1 PUBLIC INFORMATION NOTICE PURSUANT TO
2 HAWAII REVISED STATUTES SECTION 667-41

3 WHAT IS FORECLOSURE?

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

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

15 The entity or person who holds your mortgage
16 ("Mortgagee") may send you a notice informing you that
17 the Mortgagee is starting foreclosure proceedings.
18 You should not wait for that to happen; take steps to
19 prevent a foreclosure as soon as you are having
20 trouble paying your mortgage. You should contact your
21 lender or your lender's loan servicer, or you may



1 contact a budget and credit counselor or housing
2 counselor, to discuss your situation.

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

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

17 In a JUDICIAL FORECLOSURE, the Mortgagee files a
18 lawsuit against you in order to obtain a court
19 judgment that you owe the balance due under your loan
20 and to obtain an order to sell the property. The
21 initial legal document you will receive in the lawsuit
22 is called the complaint. You should consult an



1 attorney of your choice who can advise you as to the
2 steps needed to protect your rights. Judicial
3 foreclosure involves the sale of the mortgaged
4 property under the supervision of the court. You will
5 receive notice of the foreclosure case hearings and
6 the sale date and the judicial decision is announced
7 after a hearing in court. The sale of the property
8 must be approved by the court before it can be
9 completed.

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

20 After the required time has elapsed, you will be
21 sent a notice of nonjudicial foreclosure sale, which
22 will tell you the date and location of the sale.



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

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

16 STEP THREE: PUBLIC SALE. The sale of a
17 foreclosed home is usually made through a public
18 auction, where the highest bidder who can make a cash
19 deposit of up to 10% of the bid can buy the property.
20 In a judicial foreclosure, the court appoints a third
21 party commissioner to advertise and conduct the sale.
22 In a nonjudicial foreclosure, the Mortgagee advertises



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

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

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

19 In a NONJUDICIAL FORECLOSURE, the Mortgagee
20 distributes the proceeds from the sale. If the
21 mortgaged property does not sell for enough to pay off
22 the balance due under your loan, the Mortgagee may



1 have the right to file a lawsuit against you to
2 collect the deficiency. In many cases, after a
3 nonjudicial foreclosure, a Mortgagee cannot or will
4 not choose to file a lawsuit for a deficiency.

5 READ THE NOTE AND MORTGAGE CAREFULLY TO
6 UNDERSTAND WHAT IS REQUIRED AND HOW TO AVOID
7 FORECLOSURE, AND CONSULT WITH AN ATTORNEY REGARDING
8 YOUR LEGAL RIGHTS.

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

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

15 "~~{}~~§667-53~~{}~~ **Conversion to judicial foreclosure;**
16 **residential property; conditions.** (a) An owner-occupant of a
17 residential property that is subject to nonjudicial foreclosure
18 under part ~~[I-er]~~ II may convert the action to a judicial
19 foreclosure provided that:

20 (1) A petition conforming to section 667-54 shall be filed
21 with the circuit court in the circuit where the
22 residential property is located, stating that the



1 owner-occupant of the property elects to convert the
2 nonjudicial foreclosure to a judicial foreclosure
3 proceeding, no later than thirty days after [the]:

4 (A) The foreclosure notice is served on the owner-
5 occupant, as required by section [667-5 or] 667-
6 22; or

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

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



1 dismissed with prejudice as to the right of any owner-
2 occupant to convert the action to a judicial
3 proceeding, and the mortgagee may proceed
4 nonjudicially;

5 (3) Filing a petition pursuant to paragraph (1) shall
6 automatically stay the nonjudicial foreclosure action
7 unless and until the judicial proceeding has been
8 dismissed;

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

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

19 (6) [~~Notwithstanding chapter 607, the~~] The fee for filing
20 the petition shall be [~~not more than \$525, of which~~]
21 \$250, which shall be deposited into the mortgage
22 foreclosure dispute resolution special fund



1 established under section 667-86[~~; provided that if~~
2 ~~the mortgage foreclosure dispute resolution program~~
3 ~~under part V has not yet been implemented, the filing~~
4 ~~fee shall be not more than \$300].~~

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

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

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

13 SECTION 29. Section 667-54, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

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

17 (1) A caption setting forth the name of the court, the
18 title of the action, and the file number; provided
19 that the title of the action shall include the names
20 of the filing party as petitioner and the foreclosing
21 party as the respondent;

22 (2) The name, mailing address, and telephone number of the



1 filing party;

2 (3) The address or tax map key number, and the certificate
3 of title or transfer certificate of title number if
4 [~~within the land court's jurisdiction,~~] registered in
5 the land court, of the property subject to the
6 foreclosure action;

7 (4) A statement identifying all other owner-occupants and
8 mortgagors of the property whose interests are pledged
9 or otherwise encumbered by the mortgage that is being
10 foreclosed and all persons who have signed the
11 promissory note or other instrument evidencing the
12 debt secured by the mortgage that is being foreclosed,
13 including without limitation co-obligors and
14 guarantors;

15 (5) A certification under penalty of perjury that the
16 filing party is an owner-occupant of the subject
17 property and seeks to convert the nonjudicial
18 foreclosure to a judicial proceeding;

19 (6) A statement certifying that the filing party served a
20 copy of the petition on the attorney identified in the
21 foreclosure notice under section [~~667-5 or~~] 667-22
22 either by personal delivery at, or by postage prepaid



1 United States mail to, the address of the attorney as
2 set forth in the foreclosure notice under section
3 [~~667-5-02~~] 667-22; and

4 (7) A copy of the foreclosure notice that was served on
5 the filing party pursuant to section [~~667-5-02~~] 667-22
6 and for which the filing party is seeking to convert
7 to a judicial proceeding."

8 SECTION 30. Section 667-55, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~+~~\$667-55~~+~~ **Notice of default and intention to**
11 **foreclose; residential property; required statement on**
12 **conversion.** (a) The foreclosure notice that is served as
13 required under section [~~667-5-02~~] 667-22 shall include, in
14 addition to the contents required under section [~~667-5-02~~] 667-
15 22, a statement printed in not less than fourteen-point font as
16 follows:

17 "IF THE PROPERTY BEING FORECLOSED IS
18 IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN
19 OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN
20 CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A
21 PERSON WHO, AT THE TIME THIS NOTICE IS SERVED,
22 OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT



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

16 IN ADDITION, ALL OWNER-OCCUPANTS AND
17 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE
18 INTERESTS HAVE BEEN PLEDGED OR OTHERWISE
19 ENCUMBERED BY THE MORTGAGE THAT IS BEING
20 FORECLOSED AND ALL PERSONS WHO HAVE SIGNED THE
21 PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING
22 THE DEBT SECURED BY THE MORTGAGE THAT IS BEING



1 FORECLOSED, INCLUDING, WITHOUT LIMITATION, CO-
2 OBLIGORS AND GUARANTORS, SHALL FILE A STATEMENT
3 IN THE CIRCUIT COURT ACTION THAT THEY AGREE TO
4 SUBMIT TO THE JUDICIAL PROCESS AND THE
5 JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-
6 FIVE DAYS OF THE FILING OF THE ATTACHED FORM.
7 FAILURE TO SATISFY THIS CONDITION MAY RESULT IN
8 DISMISSAL OF THE CIRCUIT COURT ACTION WITH
9 PREJUDICE.

10 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE
11 HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE
12 FILING OF THE CONVERSION FORM.

13 MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE
14 AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN
15 ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID
16 FORECLOSURE OR TO MITIGATE THE EFFECTS OF
17 FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF [~~AN~~
18 ~~OWNER-OCCUPANT FILES FOR CONVERSION,~~] THE
19 NONJUDICIAL FORECLOSURE IS CONVERTED TO A JUDICIAL
20 FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT
21 THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

22 A FORECLOSING LENDER WHO COMPLETES A



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

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

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

16 "[~~§~~§667-56[~~§~~] **Prohibited conduct.** It shall be a
17 prohibited practice for any foreclosing mortgagee to engage in
18 any of the following practices:

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



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



1 loan modification program before obtaining a
2 certificate or other documentation confirming that the
3 mortgagor is no longer eligible for, or an active
4 participant of, that federal program."

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

7 "~~¶~~§667-57~~¶~~ **Suspension of foreclosure actions by junior**
8 **lienholders.** (a) Upon initiation of a foreclosure action
9 pursuant to part ~~¶~~ IA or part II by a foreclosing mortgagee
10 [~~as defined in section 667-21(b)~~], no junior lienholder shall be
11 permitted to initiate or continue a nonjudicial foreclosure
12 pursuant to part ~~¶~~ II until the foreclosure initiated by the
13 foreclosing mortgagee has been concluded by a judgment issued by
14 a court pursuant to section [~~667-1.7~~] 667-1.5, the recording of
15 an affidavit after public sale pursuant to section [~~667-5 or~~
16 667-33, or the filing of [~~a settlement document~~] an agreement
17 under the mortgage foreclosure dispute resolution provisions of
18 section 667-81.

19 (b) Upon initiation of a foreclosure action pursuant to
20 part ~~¶~~ IA or part II by a foreclosing mortgagee [~~as defined in~~
21 ~~section 667-21(b)~~], no junior lienholder shall be permitted to
22 initiate a nonjudicial foreclosure pursuant to part II during



1 the pendency of a stay pursuant to section 667-83; provided that
2 a junior lienholder may initiate or continue with a nonjudicial
3 foreclosure pursuant to part II if [~~the~~]:

4 (1) The junior lien foreclosure was initiated before the
5 foreclosure action by the foreclosing mortgagee[-]; or

6 (2) The junior lienholder is an association and has not
7 been provided notice of the foreclosure action,
8 pursuant to section 667-21.5, or has not received
9 written notification of a case opening pursuant to
10 section 667-79."

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

13 "~~{}~~**\$667-58**~~{}~~ **Valid notice[-]; affiliate statement.** (a)

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

20 (b) The bureau of conveyances document number for the
21 affiliate statement required under subsection (a) shall be
22 included in any notice required to be personally served upon the



1 mortgagor or borrower under this chapter.

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

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



1 servicer to act."

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

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

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

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

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



- 1 (1) Failing to provide a borrower or mortgagor with, or
2 failing to serve as required, the information required
3 by section 667-22 or 667-55;
- 4 (2) Failing to publish, or to post, information on the
5 mortgaged property, as required by section 667-27 or
6 667-28;
- 7 (3) Failing to take any action required by section 667-24
8 if the default is cured or an agreement is reached;
- 9 (4) Engaging in conduct prohibited under section 667-56;
- 10 (5) Holding a public sale in violation of section 667-25;
- 11 (6) Failing to include in a public notice of public sale
12 the information required by section 667-27 or section
13 667-28;
- 14 (7) Failing to provide the information required by section
15 667-41;
- 16 (8) With regard to mortgage foreclosure dispute resolution
17 under part V:
- 18 (A) Failing to provide notice of the availability of
19 dispute resolution as required by section 667-75;
- 20 (B) Participating in dispute resolution without
21 authorization to negotiate a loan modification,



- 1 or without access to a person so authorized, as
2 required by section 667-80(a)(1);
- 3 (C) Failing to provide required information or
4 documents as required by section 667-80(c); or
- 5 (D) Completing a nonjudicial foreclosure if a
6 neutral's closing report under section 667-82
7 indicates that the foreclosing mortgagee failed
8 to comply with requirements of the mortgage
9 foreclosure dispute resolution program;
- 10 (9) Completing a nonjudicial foreclosure while a stay is
11 in effect under section 667-83;
- 12 (10) Failing to distribute sale proceeds as required by
13 section 667-31;
- 14 (11) Making any false statement in the affidavit of public
15 sale required by section 667-32;
- 16 (12) Attempting to collect a deficiency in violation of
17 section 667-38; and
- 18 (13) Failing to file a foreclosure notice with the
19 department as required by section 667-76(a).
- 20 (b) Notwithstanding subsection (a), the transfer of title
21 to the purchaser of the property as a result of a foreclosure
22 under this chapter shall only be subject to avoidance under



1 section 480-12 for violations described in subsection (a)(1) to
2 (9) if such violations are shown to be substantial and material;
3 provided that a foreclosure sale shall not be subject to
4 avoidance under section 480-12 for violation of section 667-
5 56(5).

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

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

18 "(a) A mortgage creditor having a mortgage lien on a time
19 share interest who desires notice that another mortgage creditor
20 having a mortgage lien on the time share interest intends to
21 foreclose and sell the mortgaged time share interest, pursuant
22 to the power of sale under section 667-62, may submit a written



1 request to the mortgagee who is foreclosing or who may foreclose
2 the mortgage by power of sale, asking to receive notice of the
3 mortgagee's intention to foreclose the mortgage under section
4 667-62. The request for notice:

- 5 (1) May be submitted any time after the recordation [~~or~~
6 ~~filing~~] of the subject mortgage [~~at the bureau of~~
7 ~~conveyances or the land court, but shall be~~]; provided
8 that the request is submitted prior to completion of
9 publication of notice of the intention to foreclose
10 the mortgage and of the sale of the mortgaged time
11 share interest;
- 12 (2) Shall be signed by the mortgage creditor desiring to
13 receive notice, or its authorized representative; and
- 14 (3) Shall specify the name and address of the person to
15 whom the notice is to be mailed."

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

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



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

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

9 "(c) The department is authorized to contract with county,
10 state, or federal agencies, and with private organizations or
11 approved housing counselors or approved budget and credit
12 counselors for the performance of any of the functions of this
13 part. These contracts shall not be subject to chapter 103D or
14 103F."

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

17 "~~{}~~§667-74~~{}~~ **Availability of dispute resolution required**
18 **before foreclosure.** Before a public sale may be conducted
19 pursuant to section [~~667-5 or~~] 667-25 for a residential property
20 that is occupied by an owner-occupant [~~as a primary residence~~],
21 the foreclosing mortgagee [~~shall~~], at the election of the owner-
22 occupant, shall participate in the mortgage foreclosure dispute



1 resolution program under this part to attempt to negotiate an
2 agreement that avoids foreclosure or mitigates damages in cases
3 where foreclosure is unavoidable."

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

6 "[~~+~~]**§667-75**[~~+~~] **Notice of dispute resolution availability**
7 **required.** (a) A foreclosure notice served pursuant to section
8 [~~667-5-0x~~] 667-22(e) shall include notice that the mortgagee is
9 required, at the election of an owner-occupant, to participate
10 in the mortgage foreclosure dispute resolution program pursuant
11 to this part to attempt to avoid foreclosure or to mitigate
12 damages where foreclosure is unavoidable.

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

15 (1) The name and contact information of the mortgagor and
16 the mortgagee;

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

22 (3) The name and contact information of a person or entity



- 1 authorized to negotiate a loan modification on behalf
2 of the mortgagee;
- 3 (4) A statement that the mortgagor shall consult with an
4 approved housing counselor or an approved budget and
5 credit counselor at least thirty days prior to the
6 first day of a scheduled dispute resolution session;
- 7 (5) Contact information for all [~~local~~] approved housing
8 counselors;
- 9 (6) Contact information for all [~~local~~] approved budget
10 and credit counselors;
- 11 (7) A statement that the mortgagor electing to participate
12 in the mortgage foreclosure dispute resolution program
13 shall provide a certification under penalty of perjury
14 to the department that the mortgagor is an owner-
15 occupant of the subject property, including supporting
16 documentation;
- 17 (8) A general description of the information that an
18 owner-occupant electing to participate in the mortgage
19 foreclosure dispute resolution program is required to
20 provide to participate in the program as described
21 under section 667-80(c)(2);



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

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

8 "~~[†]~~§667-76~~[†]~~ **Mortgagee's filing of notice with**
9 **department; filing fee.** (a) Within three days after a
10 mortgagee serves a foreclosure notice on an owner-occupant
11 pursuant to section ~~[667-5 or]~~ 667-22, the mortgagee shall file
12 the foreclosure notice with the department and pay a filing fee
13 of \$250, which shall be deposited into the mortgage foreclosure
14 dispute resolution special fund established under section 667-
15 86.

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



1 into the mortgage foreclosure dispute resolution special fund
2 established under section 667-86."

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

5 "~~§~~667-77~~§~~ **Notification to mortgagor by department.**

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

14 (1) Information about the mortgage foreclosure dispute
15 resolution program;

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

22 (3) A statement that the mortgagor electing to participate



1 in the mortgage foreclosure dispute resolution program
2 shall provide a certification under penalty of perjury
3 to the department that the mortgagor is an owner-
4 occupant of the subject property, including a
5 description of acceptable supporting documentation as
6 required by section 667-78(a)(2);

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

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

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

22 (7) Contact information for all [~~local~~] approved housing



1 counselors;

2 (8) Contact information for all [~~local~~] approved budget
3 and credit counselors; and

4 (9) Contact information for the department.

5 The notification shall be mailed to the subject property address
6 and any other addresses for the mortgagor as provided in the
7 mortgagee's notice of dispute resolution under ~~[+]section[+]~~ 667
8 75 and the foreclosure notice under section ~~[667-5-01]~~ 667-
9 22(a)."

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

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

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

16 (1) The completed program election form provided
17 [pursuant]:

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

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

20 (2) Certification under penalty of perjury that the
21 mortgagor is an owner-occupant, accompanied with any
22 supporting documentation, including copies of recent



1 utility billing statements, voter registration
2 records, real estate property tax records, or state
3 identification forms; and

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

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

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

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

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

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

21 "(a) If an owner-occupant elects to participate in the
22 mortgage foreclosure dispute resolution program, the department



1 shall open a dispute resolution case. Within twenty days of
2 receipt of the owner-occupant's election form and fee in
3 accordance with section 667-78, the department shall mail
4 written notification of the case opening to the parties and, if
5 applicable, the condominium or other homeowner association of
6 the project where the owner-occupant's property is located, by
7 registered mail, return receipt requested, which shall include:

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

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

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

19 "(c) The written notification of a case opening under this
20 section shall operate as a stay of the foreclosure proceeding in
21 accordance with section 667-83[7] and may be [~~filed or~~]



1 recorded[, as appropriate, at the land court or bureau of
2 conveyances]."

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

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

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

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

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

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



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

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

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

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

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

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

20 (2) The owner-occupant shall provide to the department and
21 the mortgagee:

22 (A) Documentation showing income qualification for a



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



1 counselor."

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

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



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



1 other transfer of the subject property, the stay of the
2 foreclosure under section 667-83 shall be released upon [~~filing~~
3 ~~or recording the settlement document with the land court or~~
4 ~~bureau of conveyances, as appropriate.~~] the recordation of the
5 neutral's closing report. Thereafter, the office of the
6 assistant registrar of the land court or bureau of conveyances
7 may record a notice of sale or other conveyance document, as
8 appropriate.

9 (d) If the parties to a dispute resolution process reach
10 an agreement which resolves the matters at issue in the dispute
11 resolution before the first day of the scheduled dispute
12 resolution session scheduled pursuant to this section, the
13 parties shall notify the neutral by that date. The neutral
14 shall thereafter issue a closing report that the parties have
15 reached an agreement prior to the commencement of a dispute
16 resolution session. If the agreement provides for foreclosure,
17 the parties shall memorialize the agreement in a writing signed
18 by both parties [~~and provided to the neutral. Any agreement~~
19 ~~authorizing foreclosure shall be attached to the neutral's~~
20 ~~closing report~~]. The parties may [~~file or~~] record the report
21 [~~at the bureau of conveyances or the land court, as~~
22 appropriate]. If the agreement authorizes foreclosure, the stay



1 of the foreclosure under section 667-83 shall be released upon
2 [~~filing or recording with the land court or bureau of~~
3 ~~conveyances, as appropriate.~~] the recordation of the report.

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

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

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

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

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

22 (B) Failure to provide the required information or



- 1 documents;
- 2 (C) Refusal to cooperate or participate in dispute
- 3 resolution; or
- 4 (D) Refusal or failure to pay program fees under
- 5 section 667-79 in a timely manner.

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

8 (A) Failure to provide the required information or
9 documents; or

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

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

17 SECTION 48. Section 667-83, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

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



- 1 (1) The mortgage foreclosure dispute resolution program
2 established by section 1 of this Act shall be
3 operative no later than October 1, 2011; and
4 ~~[-(2) Sections 1, 13, and 14 shall be repealed on~~
5 ~~September 30, 2014, and sections 514A-90(h) and~~
6 ~~514B-146(h), Hawaii Revised Statutes, shall be~~
7 ~~reenacted in the form in which they read on the day~~
8 ~~before the effective date of this Act;~~
- 9 ~~-(3)]~~ (2) Section 10 shall take effect on July 1, 2012~~[+]~~.
- 10 ~~[-(4) Section 5 shall be repealed on December 31, 2012;~~
- 11 ~~-(5) Section 7 shall be repealed on September 30, 2014, and~~
12 ~~section 26-9(o), Hawaii Revised Statutes, shall be~~
13 ~~reenacted in the form in which it read on the day~~
14 ~~before the effective date of this Act; and~~
- 15 ~~-(6) Upon the repeal of section 1, all moneys remaining in~~
16 ~~the mortgage foreclosure dispute resolution special~~
17 ~~fund established under section 667-P, Hawaii Revised~~
18 ~~Statutes, shall be transferred to the compliance~~
19 ~~resolution fund established under section 26-9(o),~~
20 ~~Hawaii Revised Statutes.] "~~

21

PART V

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

3 ~~["§667-5 Foreclosure under power of sale; notice;~~
4 ~~affidavit after sale; deficiency judgments. (a) When a power~~
5 ~~of sale is contained in a mortgage, and where the mortgagee, the~~
6 ~~mortgagee's successor in interest, or any person authorized by~~
7 ~~the power to act in the premises, desires to foreclose under~~
8 ~~power of sale upon breach of a condition of the mortgage, the~~
9 ~~mortgagee, successor, or person shall be represented by an~~
10 ~~attorney who is licensed to practice law in the State and is~~
11 ~~physically located in the State. The attorney shall:~~

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

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



1 ~~owner-occupant, the association shall mail the~~
2 ~~notice by certified or registered mail, not less~~
3 ~~than twenty-one days before the date of sale, to:~~
4 ~~(i) The unit owner at the address shown in the~~
5 ~~records of the association and, if~~
6 ~~different, at the address of the unit being~~
7 ~~foreclosed; and~~
8 ~~(ii) All mortgage creditors whose names are known~~
9 ~~or can be discovered by the association; and~~
10 ~~(B) By publication of the notice once in each of~~
11 ~~three successive weeks, constituting three~~
12 ~~publications with the last publication to be not~~
13 ~~less than fourteen days before the day of sale,~~
14 ~~in a daily newspaper having the largest general~~
15 ~~circulation in the specific county in which the~~
16 ~~mortgaged property lies; provided that for~~
17 ~~property located in a county with a population of~~
18 ~~more than one hundred thousand but less than~~
19 ~~three hundred thousand, the public notice shall~~
20 ~~be published in the newspaper having the largest~~
21 ~~circulation expressly in the eastern or western~~
22 ~~half of the county, corresponding to the location~~



- 1 ~~of the subject property;~~
- 2 ~~(2) Give notice of the mortgagor's right to elect to~~
3 ~~participate in the mortgage foreclosure dispute~~
4 ~~resolution program pursuant to section 667-75 or to~~
5 ~~convert the nonjudicial power of sale foreclosure to a~~
6 ~~judicial foreclosure pursuant to section 667-53; and~~
- 7 ~~(3) Give any notices and do all acts as authorized or~~
8 ~~required by the power contained in the mortgage.~~
- 9 ~~(b) Copies of the notice required under subsection (a)~~
10 ~~shall be:~~
- 11 ~~(1) Filed with the state director of taxation; and~~
- 12 ~~(2) Posted on the premises not less than twenty-one days~~
13 ~~before the day of sale.~~
- 14 ~~(c) Upon the request of any person entitled to notice~~
15 ~~pursuant to this section and sections 667-5.5 and 667-6, the~~
16 ~~attorney, the mortgagee, successor, or person represented by the~~
17 ~~attorney shall disclose to the requestor the following~~
18 ~~information:~~
- 19 ~~(1) The amount to cure the default, together with the~~
20 ~~estimated amount of the foreclosing mortgagee's~~
21 ~~attorneys' fees and costs, and all other fees and~~
22 ~~costs estimated to be incurred by the foreclosing~~



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

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

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

18 ~~(e) The mortgagee or other person, excluding an~~
19 ~~association, who completes the nonjudicial foreclosure of a~~
20 ~~mortgage or other lien on residential property pursuant to this~~
21 ~~part shall not be entitled to pursue or obtain a deficiency~~
22 ~~judgment against an owner-occupant of the residential property~~



1 ~~who, at the time the notice of intent to foreclose is served,~~
2 ~~does not have a fee simple or leasehold ownership interest in any~~
3 ~~other real property.~~

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

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

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

16 SECTION 52. Section 667-5.7, Hawaii Revised Statutes, is
17 repealed.

18 ~~["**[S667-5.7] Public sale.** At any public sale pursuant to~~
19 ~~section 667-5, the successful bidder at the public sale, as the~~
20 ~~purchaser, shall not be required to make a downpayment to the~~
21 ~~foreclosing mortgagee of more than ten per cent of the highest~~
22 ~~successful bid price."]~~



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

3 ~~["§667-6 Notice to mortgage creditors. Whenever a~~
4 ~~mortgage creditor having a mortgage lien on certain premises~~
5 ~~desires notice that another mortgage creditor having a mortgage~~
6 ~~lien on the same premises intends to foreclose the mortgage and~~
7 ~~sell the mortgaged property pursuant to a power of sale under~~
8 ~~section 667-5, the mortgage creditor may submit a written~~
9 ~~request to the mortgagee foreclosing or who may foreclose the~~
10 ~~mortgage by power of sale, to receive notice of the mortgagee's~~
11 ~~intention to foreclose the mortgage under power of sale. This~~
12 ~~request for notice may be submitted any time after the~~
13 ~~recordation or filing of the subject mortgage at the bureau of~~
14 ~~conveyances or the land court, but must be submitted prior to~~
15 ~~the completion of the publication of the mortgagee's notice of~~
16 ~~intention to foreclose the mortgage and of the sale of the~~
17 ~~mortgaged property. This request shall be signed by the~~
18 ~~mortgage creditor, or its authorized representative, desiring to~~
19 ~~receive notice, specifying the name and address of the person to~~
20 ~~whom the notice is to be mailed. The mortgagee receiving the~~
21 ~~request shall thereafter give notice to all mortgage creditors~~
22 ~~who have timely submitted their request. The notice shall be~~



1 ~~sent by mail or otherwise communicated to the mortgage~~
2 ~~creditors, not less than seven calendar days prior to the date~~
3 ~~of sale.~~

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

11 SECTION 54. Section 667-7, Hawaii Revised Statutes, is
12 repealed.

13 [~~§667-7 Notice, contents; affidavit.~~ (a) ~~The notice of~~
14 ~~intention of foreclosure shall contain:~~

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

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



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

3 ~~["§667-8 Affidavit as evidence, when. If it appears by~~
4 ~~the affidavit that the affiant has in all respects complied with~~
5 ~~the requirements of the power of sale and the statute, in~~
6 ~~relation to all things to be done by the affiant before selling~~
7 ~~the property, and has sold the same in the manner required by~~
8 ~~the power, the affidavit, or a duly certified copy of the record~~
9 ~~thereof, shall be admitted as evidence that the power of sale~~
10 ~~was duly executed."]~~

11 SECTION 56. Section 667-14, Hawaii Revised Statutes, is
12 repealed.

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



1 ~~foreclosure and shall be bound by the foreclosure."]~~

2 SECTION 57. Section 667-15, Hawaii Revised Statutes, is
3 repealed.

4 ~~["~~§667-15~~ Location of public sale following power of~~
5 ~~sale foreclosure.~~ The public sale of the mortgaged property
6 shall be held only on grounds or at facilities under the
7 administration of the State, as follows:

- 8 ~~(1) At the state capitol, for a public sale of mortgaged~~
9 ~~property located in the city and county of Honolulu;~~
- 10 ~~(2) At a state facility in Hilo, for a public sale of~~
11 ~~mortgaged property located in the eastern portion of~~
12 ~~the county of Hawaii;~~
- 13 ~~(3) At a state facility in Kailua-Kona, for a public sale~~
14 ~~of mortgaged property located in the western portion~~
15 ~~of the county of Hawaii;~~
- 16 ~~(4) At a state facility in the county seat of Maui, for a~~
17 ~~public sale of mortgaged property located in the~~
18 ~~county of Maui; and~~
- 19 ~~(5) At a state facility in the county seat of Kauai, for a~~
20 ~~public sale of mortgaged property located in the~~
21 ~~county of Kauai;~~



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

6 SECTION 58. Section 667-21.6, Hawaii Revised Statutes, is
7 repealed.

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



1 ~~to the association of its intent to cure the delinquency, any~~
2 ~~nonjudicial foreclosure of the lien shall be stayed pending the~~
3 ~~sixty-day period or a longer period that is agreed upon by the~~
4 ~~parties."]~~

5 SECTION 59. Section 667-26, Hawaii Revised Statutes, is
6 repealed.

7 ~~["**§667-26 Public showing of mortgaged property.** (a) If~~
8 ~~the default is not cured as stated in the notice of default and~~
9 ~~intention to foreclose, the foreclosing mortgagee shall conduct~~
10 ~~two open houses of the mortgaged property before the public~~
11 ~~sale; provided that the foreclosing mortgagee timely received~~
12 ~~the signed letter of agreement from the mortgagor as required by~~
13 ~~the notice of default and intention to foreclose. Only two open~~
14 ~~houses shall be required even if the date of the public sale is~~
15 ~~postponed.~~

16 ~~(b) Even if the signed letter of agreement is timely~~
17 ~~received, if there is no subsequent cooperation by the mortgagor~~
18 ~~to allow two open houses, the public sale may be held without~~
19 ~~any open houses of the mortgaged property. If the public notice~~
20 ~~of the public sale advertised the dates and times of the open~~
21 ~~houses, but there were no open houses because of the lack of~~
22 ~~cooperation by the mortgagor, the public sale may still be held~~



1 ~~as advertised, and the public notice of the public sale may not~~
2 ~~need to be republished."]~~

3 SECTION 60. Section 667-50, Hawaii Revised Statutes, is
4 repealed.

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

9 SECTION 61. Section 667-61, Hawaii Revised Statutes, is
10 repealed.

11 ~~["**[§667-61] Definitions.** For the purposes of sections~~
12 ~~667-62 to 667-65, "time share interest" shall have the same~~
13 ~~meaning as in section 514E-1."]~~

14 SECTION 62. Section 667-72, Hawaii Revised Statutes, is
15 repealed.

16 ~~["**[§667-72] Definitions.** As used in this part:~~

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



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

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

9 ~~"Department" means the department of commerce and consumer~~
10 ~~affairs.~~

11 ~~"Director" means the director of commerce and consumer~~
12 ~~affairs.~~

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

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

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



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

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

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

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

14 SECTION 63. In codifying the new sections added by
15 sections 2 and 5 of this Act, the revisor of statutes shall
16 substitute appropriate section numbers for the letters used in
17 designating the new sections in this Act.

18 SECTION 64. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 65. This Act shall take effect on July 1, 2050;
21 provided that:



- 1 (1) Section 6 of this Act, amending section 454M-5, Hawaii
2 Revised Statutes, shall take effect on July 1, 2012;
3 and
4 (2) Section 27 of this Act, amending section 667-41,
5 Hawaii Revised Statutes, shall take effect on
6 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. Deletes language requiring open houses of foreclosed condominium and community association units and makes conforming amendments. Effective 07/01/50. (SD2)

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

