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Testimony to the Senate Committee on Commerce and Consumer Protection
March 14, 2012

Testimony in opposition to HB 1875 HD2, Relating to Foreclosures

To: The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. We are in opposition to HB 1875 HD2, Relating to Foreclosures.

While we understand the current economic situation, and the plight of homeowners today, we respectfully oppose this measure. We recognize and appreciate the efforts of the legislature to amend Act 48 to address some concerns raised by lenders, however, this bill continues to present many significant concerns for Hawaii's credit unions, and the lending market as a whole. We have listed these concerns below.

1. The League opposes the repeal of nonjudicial foreclosures under Part I. The Part I non-judicial foreclosure process should continue to exist as a viable alternative to the Part II non-judicial foreclosure process now that Act 48 strengthened consumer protections in Part I. Act 48 now (a) requires that Part I foreclosure notices be served at least 21 days before the auction date, (b) specifies that the service of the notice be in the same manner as serving civil complaints, (c) enables an owner-occupant to convert a Part I non-judicial foreclosure to a judicial foreclosure or to elect dispute resolution under certain circumstances, and (d) prohibits a lender in a Part I non-judicial foreclosure from pursuing a deficiency against certain owner-occupants. At a minimum, Part I nonjudicial foreclosures should be permitted for foreclosures of commercial, industrial and investor-owned property, if not for owner-occupied residential property.

2. Because of the increasing costs being charged by certain newspapers of daily circulation in Hawaii to print the notices of judicial and non-judicial foreclosure auctions required to be "published", the League supports the Legislature's efforts to have a state agency provide a centralized internet website for the official posting of notices required by Chapter 667.

3. The League opposes the lifting of the cap on an association's super-lien for maintenance fees. It was originally capped at the lesser of 6 months of $3,200. Under Act 48, that cap lifted to the lesser of 12 months or $7,200. Now, the super-lien is simply six months of

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monthly assessments with no monetary cap. This cost will eventually be borne by the next private buyer of the unit, and will effectively depress prices for units in the project.

4. **§667-56**: Prohibited practices: The League seeks repeal of §§667-56(5), -56(6) and -56(7). In all three subsections, the phrase "completing nonjudicial foreclosure proceedings is ambiguous. It is unclear whether that period ends with: recordation of an affidavit of sale; recordation of a conveyance document to the foreclosure sale purchaser; or recovery of possession from the foreclosed mortgagor of the foreclosed property by the purchaser.

(a) Section 667-56(5) also ignores that a lender or servicer may not have notice of a pending short sale escrow at the time of completion of a nonjudicial foreclosure sale.

(b) Section 667-56(6) also uses the phrase "bona fide loan modification negotiations." This phrase is vague, and raises many questions.

(c) Section 667-56(7) also is too vague because it fails to define with clarity when a mortgagor is being evaluated and when a mortgagor is no longer being evaluated for a loan modification program. Section 667-56(7) presumes that there will be timely-issued documentation that a borrower is no longer being evaluated when that is not always the case.

5. **§667-58**: As worded, § 667-58(a) implies credit unions must file affiliate statements naming their own officers. The League suggests § 667-58(a) be amended to begin as follows:

> "Any notices made pursuant to this chapter may be issued only by the foreclosing mortgagee or lender, or an officer of the foreclosing mortgagee or lender, or by a person identified by the foreclosing mortgagee or lender in an affiliate statement signed by that foreclosing mortgage or lender and recorded . . . ."

6. **§667-59**: The League suggests that this section, captioned, "Actions and Communications with the Mortgagor in Connection with a Foreclosure," should be amended to include the words "in writing," in the first sentence so that it will read as follows:

> "A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements to the mortgagor, which are made in writing by its agents, including but not limited to its . . . ."

7. **§ 667-60**: The League submits that the proposed amendment of § 667-60 is too complex and overly broad. Section 667-60 now states: "Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2." The requirement that a claimant must show a court proof that an act was "unfair and deceptive" is removed. Any violation of Chapter 667, no matter how miniscule, becomes an unfair and deceptive act or practice entitling the claimant to certain remedies and damages, and that includes voiding of the contract or agreement. Section 667-60 is often cited as one of the principal reasons why lenders decided after May 5, 2011 to foreclose judicially rather than non-judicially.

The amendment of §667-60 proposed by this bill should not be enacted because:

(a) It would create a "laundry list" of violations which would be unfair or deceptive acts or practices,

(b) It would create violations which could result in a non-judicial foreclosure sale being voided, and

(c) It would allow actions to void the foreclosure sale to be filed up to 6 months after an affidavit of the sale is recorded.

The League submits that the proposed amendment is too complex and overly broad and it would continue to discourage lenders from foreclosing non-judicially. It is also unnecessary.

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Every lender is already subject to potential liability under §480-2 where someone has evidence sufficient to convince a court that a violation occurred.

9. Section 4 of the bill adds a new section to Chapter 667, requiring an attorney affirmation before a foreclosure can be pursued. This new section is unnecessary because adequate safeguards already exist. This provision also would potentially violate attorney-client privilege.

In addition to the concerns listed above, we also concur with the issues raised by the Hawaii Bankers Association and the Hawaii Financial Services Association. Thank you for the opportunity to testify.

OUTRIGGER
ENTERPRISES GROUP
Hospitality • Retail • Development

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THE SENATE
26th LEGISLATURE
REGULAR SESSION of 2012

COMMITTEE ON COMMERCE & CONSUMER PROTECTION
Senator Rosalyn H Baker, Chair

3/14/12
Rm. 229, 9:00 AM

HB 1875, HD 2
Relating to Travel & Tourism Stimulus Initiatives

&
SB 3049
Relating to Foreclosures

Chair Baker and Members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels and Resorts to comment on this bill.

Our comment is directed to the section relating to the life of a lien.

The life of the lien as proposed in this bill is too short. While we understand the reason for the short time line, we believe that rushing to make a judgment may not be in the best interest of an AOAO. A number of times foreclosure proceedings cannot be completed quickly or in time.

The two-year time frame also does not allow for flexibility if any unforeseen circumstance happens to arise in some cases.

We urge the elimination of this language or if not extend the time frame out to 5 or 6 years.

Mahalo for allowing me to testify.

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Testimony for CPN 3/14/2012 9:00:00 AM HB1875

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: David O'Neal
Organization: Royal Kunia Community Association
E-mail: oneald003@hawaii.rr.com
Submitted on: 3/13/2012

Comments:
As the Government Affairs Chair for the Royal Kunia Community Association, I would ask that Planned Community Associations be exempt from the two year lien expiration provision. If forced to foreclose on a lien to prevent it from expiring, RKCA would be foreclosing on homeowners that could owe under $500 in delinquent maintenance assessments. In addition, the legal fees involved would be many times higher than the amount even owed. If the automatic lien was in force, if it's not recorded, what would stop a homeowner from selling the property? Escrow will show a clean title to the property, and there are instances where a home is sold with no contact from escrow. So the automatic lien does not protect the Association, and if the recorded lien expires, the Association loses a key tool to aid in collecting on delinquent accounts. Please amend this bill to remove Planned Community Associations from this two year lien expiration provision. It is anti-consumer (it will increase legal fees) and it is anti-Association (the Association loses a valuable collection tool). Thank you.

Dave O'Neal

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Testimony for CPN 3/14/2012 9:00:00 AM HB1875

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Dante Carpenter
Organization: Country Club Village, AOAO
E-mail: carpenterd@hawaiiantel.net
Submitted on: 3/13/2012

Comments:
I am president(over 15 years) of the Condominium Association known as Country Club Village, Phase 2, AOAO. Located in Salt Lake Area comprised of 2 Hi-Rise 21 story Buildings with 469 - 2 and 3 BR Units, etc.

Limitations in liens in Part II-Section 2; Part III-Sections 8 & 9 are extremely harmful to condominium associations - This bill attempts to remove the right of the Association of Apartment Owners (AOAO) from collecting debts incurred by other neighbors/homeowners who are in default of agreed upon assessments for the Day to Day costs of Association Operations. These costs are proportionately paid by all members of the AOAO.

Condominuium Directors are unpaid Homeowners who approve policy and allocate costs according to Association needs ICW HRS Chapters 514A and B, recently revised. These Boards have fiduciary responsibilities to assure compliance with rules, regulations, assure safety, comfort, as well as preserve value(s) of the facilities and property of the Association. This includes AOAO financial solvency, among other responsibilities.

Associations are neither bankers, mortagors, lenders, nor collectors, unless put in that position by default. On the other hand, we look to working out amicable solutions with homeowners who have defaulted in payments if agreements can be reached. Please do not allow shirking of responsibilites of certain irresponsible homeopwners by legislative fiat.

Please refer to testimony submitted by Anderson Lahne and Fujisaki who are our attorneys. In the absence of deleting these onerous sections, please use the language as recommended. Thank you for your consideration.

Dante Carpenter, President, CCV, Phase 2, AOAO.

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Testimony for CPN 3/14/2012 9:00:00 AM HB1875

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Trevor Rennie
Organization: Individual
E-mail: Trennie@trevlin.ca
Submitted on: 3/14/2012

Comments:

My name is John Morris. I was a member of the Mortgage Foreclosure Task Force and was on the condominium and homeowner association workgroup of the task force during 2011. I have practiced condominium association law for over 23 years and have personally represented condominium and homeowner associations in hundreds of nonjudicial foreclosures. I was also the State's first condominium specialist at the DCCA from 1988-1991, where I gained a perspective on owner concerns. I would like to suggest the changes in the attached.

The first set of changes merely relate to the fact that, despite best efforts, the word "mortgagor" or "mortgaged property" seems to have crept into the association version of the nonjudicial foreclosure provisions in HB 1875 HD2. For clarity and consistency, it would be good to make those corrections.

The second set of changes relate to the no-personal-service provisions of the bill. On further reflection, it seems that the provisions should be clarified as indicated. One problem is that section 667M creates a conflict. The second problem is the section about net rental proceeds in 667-B seems to suggest that only one month's worth of net rental proceeds have to be deducted from the owner's delinquency, when, in fact, it should be the total amount of net rental proceeds during the life of the rental of the unit.

Thank you for the opportunity to testify

John Morris

HB 1875 HD2 SUGGESTED CLARIFICATIONS

*Note: These changes: 1) clarify how an owner can redeem the owner's property; and 2) state that the **total** net rental proceeds collected by the association, not just the net rent proceeds for one month, must be deducted from the owner's delinquency.*

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

* * *

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

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

(2) Proceed with a nonjudicial foreclosure of the unit; provided that if the association proceeds without the permission of the court, the association shall not be entitled to obtain a deficiency judgment against the unit owner, and the unit owner shall have one year from the date the association records the deed in the nonjudicial foreclosure to redeem the unit by paying the unit owner's delinquency to the association; or

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

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

(B) Any rental agent commissions; and

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

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

§667-M Recordation; full satisfaction of debt by borrower. Except as provided in subsection 667-B(f)(2), ~~The~~ the recordation of both the conveyance document and the affidavit shall not operate as full satisfaction of the debt owed by the unit owner to the association unless the sale proceeds from the unit or the amounts paid by a purchaser under the special assessment permitted by section 421J-A or 514B-146 are sufficient to satisfy the unit owner's debt to the association, including the association's legal fees and costs. The debts of other lien creditors are unaffected except as provided in this part.

SB 2429 SD2 SUGGESTED CORRECTIONS RE REPLACEMENT OF TERM "MORTGAGOR" WITH "UNIT OWNER"

§667-F Public notice of public sale; contents; distribution; publication.

* * *

(d) The association shall have the public notice of the public sale:

(1) Printed in not less than seven-point font and published in the classified section of a newspaper of general circulation in the real property tax zone in which the unit is located, as shown on the applicable county real property tax maps kept by each respective county's real property tax assessment division, except for the county of Kalawao which shall be considered its own geographic area for the purposes of this paragraph. For the purposes of this paragraph, a newspaper is of general circulation if the newspaper:

(A) Contains news of a general nature; and

(B) Is distributed within the county where the ~~mortgaged property~~ unit is located:

§667-K Affidavit after public sale; contents.

* * *

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

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

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

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

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

(A) A notice of default and intention to foreclose was served on the ~~mortgagor, the borrower,~~ unit owner and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the following manner: _____;

§667-L Recordation of affidavit, conveyance document; effect.

* * *

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

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

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

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

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

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

Hawaii Bankers Association

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Presentation to the Committee on Commerce and Consumer Protection
Wednesday, March 14, 2012
Testimony on HB 1875, HD2 Relating to Foreclosures

In Opposition

TO: Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 1875, HD2. HBA is the trade organization that represents FDIC insured depository institutions operating branches in Hawaii.

While we appreciate the efforts of all members of the Mortgage Foreclosure Task Force and remain sympathetic to those homeowners who are experiencing hardship due to inappropriate behavior by, and difficulty communicating with, their mainland lenders, we respectfully oppose this bill.

We recognize that steps were taken to address lenders' concerns, such as narrowing the scope of potential violations related to Unfair and Deceptive Acts or Practices and providing for a temporary repeal. However, although modest improvements were incorporated into the Task Force recommendations, the recommendations and other added provisions still make Act 48 unworkable.

Several issues that need to be reconsidered include:

- Section 421J-A (page 3) "The **priority of the association's lien shall be as provided in the association documents** or by the date of recordation of the liens, except as otherwise provided by law" should have the same amendment made in SB 2429, SD2. Otherwise, it is implied that the Association's lien is superior to mortgagee's lien regardless of when it was recorded.

- Like SB 2429, SD2, the provision to hold two open houses should be deleted. It is unrealistic as the lender does not have any legal right to take possession of the property and could face unknown potential liability for any action taken to comply with this provision.
- The attorney affirmation in judicial foreclosure provision, as pointed out by the Hawaii Bar Association, violates the attorney-client privilege. As the Attorney General testified in a hearing the Attorney General's settlement, "robo" signing was not a problem in Hawaii which raises the question of the purpose of this provision. The rules of civil procedure already provide for remedies for improper action by an attorney. This provision should be deleted.

- Language specifying the application of rent collected by an Association of Apartment Owners should be included in the bill. It is anticipated due to the extended period of time for a mortgagee to foreclose, Associations will likely be able to collect rent to cover its delinquent maintenance fees and other costs,

therefore, any excess rental income received by the association from the unit should be paid to existing lienors based on priority of lien, and not on a pro rata basis.

- Allowing the filing of an action to void the foreclosure sale for up to six months after the sale is recorded. This will chill public bidding by third-parties and is unwarranted, overly broad and unnecessary.

- Removing the "cap" on the dollar amount on delinquent maintenance fees up to 12 months will likely lead to the unintended consequence of making it more difficult for first-time and middle-income homebuyers to qualify for a loan since it will require more money to complete the purchase.

  We are not aware of the reaction of government sponsored enterprises, such as Fannie Mae, to such a proposal but a doubling of the time period will cause GSEs to take protective action.

  This provision is especially damaging to Hawaii borrowers because if the unit is a condominium, the buyer at foreclosure will have to pay the delinquent maintenance fees, and the potential for this liability will inherently be borne by future borrowers. It also makes it more difficult for the condo owner to sell.

- Nonjudicial foreclosures under Part I, Section 51 of SB 2429, SD2, should not be repealed. At a minimum, Part I nonjudicial foreclosures should be permitted for foreclosures of commercial, industrial and investor owned property.

- Repealing section 667-60 should be permanent.

All of the above, if not addressed, serve to discourage lenders from utilizing the non-judicial process. We must not lose sight of the fact that funds used to provide mortgages to borrowers come from banks' depositors. As depository institutions, banks have a fiduciary responsibility and obligation to all our depositors that the funds entrusted to us is preserved for future return. What the legislature is proposing no longer serves as a streamlined and fair method of foreclosure for lenders to seek fulfillment of their loan contracts.

Last year, we cautioned that Act 48 would likely result in unintended consequences. Almost immediately upon its passage, Fannie Mae and Freddie Mac issued mandates to lenders to stop all non-judicial foreclosures and switch to the judicial process. Absent any appropriate and immediate remedy, it was evident that our court system would become overburdened and an already lengthy foreclosure process would grow even longer. Additional delays in removing the backlog of foreclosures only prolong a return to a healthy housing market and Hawaii's economic recovery.

The Hawaii Credit Union League, Hawaii Financial Services Association and Hawaii Bankers Association "minority reports" contained in the Task Force report outline additional issues that need to be addressed in the non-judicial foreclosure law. A summary of those combined reports is attached.

Thank you for the opportunity to provide our testimony.

Gary Y. Fujitani
Executive Director

Attachment

Attachment

Summary of Lenders' Issues on Task Force Bill

1. **§667-56 Prohibited conduct:** Repeal of §§667-56(5), -56(6) and -56(7). In all three subsections, the phrase "completing nonjudicial foreclosure proceedings is ambiguous. It is unclear whether that period ends with: recordation of an affidavit of sale; recordation of a conveyance document to the foreclosure sale purchaser; or recovery of possession from the foreclosed mortgagor of the foreclosed property by the purchaser.

(a) Section 667-56(5) also ignores that a lender or servicer may not have notice of a pending short sale escrow at the time of completion of a nonjudicial foreclosure sale. Item (5) attempts to give a potential short sale that is agreed to at or around the time of the non-judicial foreclosure sale priority over the foreclosure so long as the sales price is at least 5% greater than the foreclosure sale price. Recognizing that a sales commission of 6% on the short sale would wipe out the entire 5% increased sales price, the Task Force agreed to increase this percentage to at least 10%. However, this does not address other conditions in the short sale that might have prevented the lender from approving the short sale in the first place, such as payment of other debts of the seller that effectively reduce the amount of the payoff to the lender. This effectively places unsecured creditors ahead of the foreclosing lender and other lien holders

(b) Section 667-56(6) also uses the vague phrase "bona fide loan modification negotiations." If a mortgagor has been denied a loan modification, can the mortgagor then reapply seriatim and maintain the mortgagor's status as pending bona fide loan modification negotiations? Does the time reset each time a mortgagor submits a loan modification request notwithstanding the requests are not materially different than one already denied?

(c) Section 667-56(7) also is too vague because it fails to define with clarity when a mortgagor is being evaluated and when a mortgagor is no longer being evaluated for a loan modification program. This section presumes that there will be timely-issued documentation that a borrower is no longer being evaluated when that is not always the case.

Section 667-60 must be amended to provide clarity to these items and allow the foreclosing lender to end negotiations at some point.

2. **§667-58 Valid notice; affiliate statement**: (a) As worded, the subsection implies mortgagee/lender must file affiliate statements naming their own officers. A suggested amendment to begin as follows:

> Any notices made pursuant to this chapter may be issued only by the foreclosing mortgagee or lender, or by a person identified by the foreclosing mortgagee or lender in an affiliate statement signed by that foreclosing mortgage or lender and recorded . . . .

3. **§667-59 Actions and communications with the mortgagor in connection with a foreclosure**: Besides the obvious proof problems and violation of the parol evidence rule, this section is directly counter to the express stated provisions in virtually all notes and mortgages which require any revision to the existing terms to be in writing. This section should be amended to include the words "in writing," in the first sentence so that it will read as follows:

"A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements to the mortgagor, which are made **in writing** by its agents, including but not limited to its . . . ."

4. **§667-60 Unfair or deceptive act or practice; transfer of title**: The Task Force attempted to correct one of the more problematic provisions in Act 48 Sec. 667-60 states: "Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2." It unnecessarily subjects lenders to the liabilities in HRS Sec. 480-2 for even immaterial and nonsubstantive violations of HRS Chapter 667 (Mortgage Foreclosures). HRS Sec. 667-60 has been cited as one of the reasons why lenders decided after May 5, 2011 to foreclose judicially rather than non-judicially. This section should be repealed.

Instead, the Task Force recommended that Sec. 667-60 be changed to: (a) create a "laundry list" of 21 violations which would be unfair or deceptive acts or practices (including 7 items in Sec. 667-56 and 4 items related to the Mortgage Foreclosure Dispute Resolution Program), (b) create 17 violations which could result in a non-judicial foreclosure sale being voided, and (c) allow actions to void the foreclosure sale to be filed up to 6 months after an affidavit of the sale is recorded. This recommendation is arguably unwarranted and overly broad. Lenders likely will continue not to use non-judicially foreclosure process and consequently not use the dispute resolution program.

5. **§667-85 Neutral qualifications; status and liability**: Reads in part: "A neutral shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the mortgage foreclosure dispute resolution program." This sentence should be repealed. A neutral in the Mortgage Foreclosure Dispute Resolution Program should not be immune from testifying if the neutral makes findings or determinations which subject a lender or a borrower to sanctions.

6. **§667-80 Parties; requirements; process**: This section should be amended to permit mainland lenders to attend during reasonable business hours where they are situated. Additionally, provision must be made to accommodate situations where approval of a loan modification requires more than one approval. For example, in instances where mortgage insurance is in place, the insurer will be required to approve the modification in addition to the lender.

7. **§667-41 Public information notice requirement**: While improved tremendously by the proposed amendment approved by the Task Force, this section still potentially applies to certain commercial loans in which residential property is taken as collateral. It is doubtful that the Legislature intended this informational notice to apply to commercial borrowers and applicants and requests that the Legislature, in addition to adopting the proposed revisions made the Task Force, also enact a further amendment to specify that such notice requirement applies only to consumer, residential mortgage loans.