LATE TESTIMONY

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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Friday, March 30, 2012
5:00 p.m.

TESTIMONY IN SUPPORT OF SB2429 SD2: RELATING TO FORECLOSURES

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (the "Department") appreciates the opportunity to testify in support of SB2429 SD2. My name is Everett Kaneshige, I am the chairperson of the Mortgage Foreclosure Task Force ("MFTF") and am also testifying on behalf of the Department.

The SD2 under consideration by the Committee addresses concerns from community associations regarding issues arising from enabling community association nonjudicial foreclosures using language borrowed from condominium association law. However, since this bill's last hearing, at the prompting of the Senate, DCCA, the Community Association Institute ("CAI"), and members of the MFTF have collaborated to draft further fixes to community, and condominium, association foreclosures that

adjust the term of recorded liens to six years, and clarify that fines, penalties, legal fees, and late fees can be foreclosed judicially. CAI and representatives of planned community associations are in agreement with DCCA regarding these amendments. I have attached a document ("DCCA Proposed Draft for SB 2429 SD2") with all the changes agreed to by the parties, as well as some amendments from DCCA. The attachment is a redline version in order to make the amendments easier to find. There is a summary of all proposed changes (DCCA amendments are labeled "DCCA Amendment" and are marked in red text in the summary) on the first three pages of the attachment by page number (of the redline draft), bill section, and statute section (if applicable), that describes the amendment, as well as the purpose of the amendment.

DCCA would like to propose amendments that were not part of the agreement between CAI, the planned community associations, and the department:

1. §667-76 had a new subsection (b) added in SB 2429 SD1 that allows electronic publication of notices of public sale. DCCA has added the judicial foreclosure section for association lien foreclosures to the list of notices of public sale that can be published electronically. DCCA also added a dollar amount for the fee, which was previously left blank, based on department estimates regarding the cost of developing and administering such a filing and publication system. (Page 119 of the redline)
2. Changed the defective date from July 1, 2020 to August 1, 2012. Given the number of changes being made to HRS in this bill, the department believes it will be ready to implement all of the changes by this date. (Page 143 of the redline)

3. Various technical amendments.

Thank you for this opportunity to testify in support of SB 2429 SD2. The Department recommends that it be passed, with amendments per the attached "DCCA Proposed Draft for SB 2429 SD2". I will be happy to answer any questions that the Chairman or members of the Committee may have.

Attachment: DCCA Proposed Draft for SB 2429 SD2
Note: Additions and deletions in the DCCA Proposed Draft are noted in red text, text that has been moved is noted in green.

Summary of Proposed Amendments to SB 2429 SD2, by Page # and Section

Page #'s Correspond to the attached redline proposed draft

1) Pages 3-5, Section 2, §421J-A:
   a) Changes term of recorded lien to six years (to match up with the statute of limitations).
   b) Tolls lien if the owner files a petition for relief under the US Bankruptcy Code (11 U.S.C. §101 et seq.).
   c) Requires foreclosure against a lien solely for fines, penalties, legal fees, or late fees to be filed in court pursuant to Part IA of Chapter 667 (Judicial Foreclosure).
2) Page 11, Section 2, §421J-B:
   a) Clarifies issuer of written notice of intent to collect as the "the board's", deletes "its".
3) Pages 12-15, Section 2, §421J-C:
   a) Deletes "Release of recorded liens of units by associations"
      i) As §421J-A now provides for the lien to automatically sunset, this language is no longer necessary.
4) Pages 15-27, Section 3, Chapter 667:
   a) Deletes "Release of recorded liens of units by associations" sections for §514A and §514B
      i) The same changes regarding items 1(a), 1(b), and 1(c) of this Summary were made to §514A-90 and §514B-146, respectively, thus as with item 3(a)(i) the relevant sections of §514A and §514B were deleted.
   b) Amends Foreclosure by Action (judicial foreclosure) under the new Part IA to include a requirement that associations accept "reasonable payment plans" in the same manner as with a nonjudicial foreclosure under Part II.
   c) Changes §667- "Association foreclosures; cure of default; payment plan." (2) and (3) to replace "after commencement of the foreclosure by action" with "after service of the association's complaint for foreclosure by action on the unit owner"
      i) The previous phrasing was pulled from the power of sale foreclosure language (nonjudicial) and was a poor fit for foreclosure by action (judicial foreclosure) as it did not reference the court servicing process. *CAI and planned community association representatives agree with DCCA regarding this change.*
   d) Adds language regarding Notice of Public Sale publication for judicial foreclosures that replicates the process for nonjudicial foreclosures. (pg. 24)
   e) Inserts Attorney Affirmation language from HB 1875 HD2. (pg. 25)
5) Pages 34-27, Section 3, §667-B:
   a) Moves requirement for association to accept "a reasonable payment plan" to earlier in the paragraph, for clarity.
   b) Clarifies that it is the unit-owner who "gives written notice to the association" by replacing "its" with "the unit owner's".
   c) Clarifies that a unit owner redeems the unit "by paying the unit owner's delinquency to the association".
   d) Further clarifies the means and process for redeeming a unit (§667-B(e)(3)).
6) Page 41, Section 3, §667-F:

a) Changes "mortgaged property" to "unit", as association's are NOT mortgagees when they foreclose.

7) Page 43, Section 3, §667-G:
   a) Deletes comma for further clarity, nonsubstantive.
8) Pages 46-47, Section 3, §667-K:
   a) Changes "a association" to "an association" in §667-K(b)(2), nonsubstantive.
   b) Changes "mortgagor, the borrower," to "unit owner"in §667-K(b)(4)(A) as a unit owner is not a mortgagor when an association is foreclosing.
9) Page 50, Section 3, §667-L:
   a) Changes "mortgagor" to "unit owner", see item 8(b).
   b) Changes "a association" to "an association", nonsubstantive.
   c) Changes "mortgagor" to "unit owner", see item 8(b).
10) Page 51, Section 3, §667-M:
   a) Provides that a recordation of a lien by an association for the purposes of establishing priority shall not operate as full satisfaction of the debt.
11) Page 52, Section 4:
   a) Renames Section 6 to Section 4, nonsubstantive, subsequent sections renumbered appropriately.
12) Pages 54-55, Section 6, §501-151:
   a) Changes "occupation" to "occupancy" and adds "the" before "certificate of title..." for clarity.
13) Pages 63-65, Section 9, §514A-90:
   a) Changes term of recorded lien to six years (to match up with the statute of limitations).
   b) Tolls lien if the owner files a petition for relief under the US Bankruptcy Code (11 U.S.C. §101 et seq.).
   c) Requires foreclosure against a lien solely for fines, penalties, legal fees, or late fees to be filed in court pursuant to Part IA of Chapter 667 (Judicial Foreclosure).
14) Pages 68-69, Section 10, §514B-146:
   a) Changes term of recorded lien to six years (to match up with the statute of limitations).
   b) Tolls lien if the owner files a petition for relief under the US Bankruptcy Code (11 U.S.C. §101 et seq.).
   c) Requires foreclosure against a lien solely for fines, penalties, legal fees, or late fees to be filed in court pursuant to Part IA of Chapter 667 (Judicial Foreclosure).

19) Page 142, Section 61:

a) Changed "sections 2 and 5" to "sections 2 and 3", due to renumbering of sections resulting from deletions.

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

S.B. NO. 2429 S.D. 2

A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

PART I

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

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

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

(A) Participate in the mortgage foreclosure dispute

(B) Convert the nonjudicial foreclosure to a judicial

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

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

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

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

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

(3) Mortgage foreclosure counseling and dispute resolution issues.

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

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

PART II

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

1. By adding [illegible] new sections to be appropriately designated and to read:

"**§421J-A** (a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association's lien shall, except as otherwise provided by law, be as provided in the association documents or, if no priority is provided in the association documents, by the recordation date of the liens; provided that any amendment to the association documents that governs the priority of liens on the unit shall not provide that an association lien shall have priority over a mortgage lien that is recorded before the amendment is recorded. [illegible]

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

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

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

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

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

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

(4) Upon the recording of the instrument of conveyance;

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Subject to this subsection and subsection (h), the board may specially assess the amount of the unpaid regular periodic assessments

for assessments against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that:

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

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

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular periodic assessments that were assessed during the six months

immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

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

"Completion" means:

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

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

"Regular periodic assessments" does not include:

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

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

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

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

§421J-B **assessments from tenants or rental agents.** (a) If a unit owner rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the regular assessments, the board, for as long as the default continues, may demand in writing and receive each month, or any other period of time for rental payment as provided in the lease, from any tenant occupying the unit or rental agent

renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due at the time of demand. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By designating part I as part IA and amending the title of that part to read:

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

2.

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

"[~~(~~]PART II.[~~) ALTERNATE~~] POWER OF SALE FORECLOSURE PROCESS"

By adding a new part I to read:

"PART I. GENERAL PROVISIONS

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

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

"Approved housing counselor" means a Hawaii-based housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Nonjudicial foreclosure" means foreclosure under power of sale.

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

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

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

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

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

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

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

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

procedure and under sections 634-35 and 634-36, excluding however, any return or affidavit of service obligations required therein.

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

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

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

By adding a new part to be appropriately designated and to read:

"PART . ASSOCIATION ALTERNATE POWER OF SALE FORECLOSURE PROCESS

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

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

(1) The name and address of the association;

(2) The name and last known address of the unit owners;

(3) With respect to the unit, the address or a description of its location, tax map key number, and certificate of title

or transfer certificate of title number if registered in the land court;

(4) The description of the default or, if the default is a monetary default, an itemization of the delinquent amount;

(5) The action required to cure the default, including the delinquent amount and the estimated amount of the association's attorney's fees and costs, and all other fees and costs related to the default estimated to be incurred by the association by the deadline date;

(6) The date by which the default must be cured, which shall be within sixty days after service of the notice of default and intention to foreclose;

(7) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the entire unpaid balance of the moneys owed to the association will become due, that the association intends to conduct a power of sale foreclosure to sell the unit at a public sale without any court action and without going to court, and that the association or any other person may acquire the unit at the public sale;

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

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

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

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

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

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

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

(c) A unit owner may submit a payment plan within thirty days after service of a notice of default and intention to foreclose on the unit owner. The unit owner shall submit the payment plan to the

association or its attorney by certified mail return receipt requested or by hand delivery.

A unit owner may also cure the default within sixty days after service of a notice of default and intention to foreclose on the unit owner by paying the association the full amount of the default, including the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default that are incurred or estimated to be incurred by the foreclosing association.

From and after the date that the unit owner gives written notice to the association of intent to cure the default or timely submits a payment plan, any nonjudicial foreclosure of the lien shall be stayed during the sixty-day period to cure the default or during the term of the payment plan or a longer period that is agreed upon by the parties. A unit owner's failure to strictly perform any agreed-upon payment plan shall entitle the association to pursue its remedies without further delay.

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

(1) Timely payment of all assessments that become due after the date that the payment plan is proposed; and

(2) Additional monthly payments of an amount sufficient to cure the default, within a reasonable period under the circumstances as determined by the board of directors in its discretion; provided that a period of up to twelve months shall be deemed reasonable; and provided further

that the board of directors shall have the discretion to agree to a payment plan in excess of twelve months.

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

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

(1) The unit owner;

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

(3) The state director of taxation;

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

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

(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 _____

_____ 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

(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 owner's delinquency shall be calculated by deducting the net rental proceeds - if any, from the owner's delinquency.

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

§667-D Cure of default. (a) If the default is cured as required by the notice of default and intention to foreclose, or if the parties have agreed on a payment plan, the association shall rescind the notice of default and intention to foreclose. Within fourteen days of the date of the cure or an agreement on a payment plan, the association shall so notify any person who was served with the notice of default and intention to foreclose. If the notice of

default and intention to foreclose was recorded, a release of the notice of default and intention to foreclose shall be recorded.

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

§667-E Date of public sale of unit; place of sale. (a) The public sale of the unit shall take place on the later of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The name of the unit owner;

(5) The name of the association;

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

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

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

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

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

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

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

(2) Mailed or delivered to any prior or junior creditors having a recorded lien on the unit before the recordation of the

notice of default and intention to foreclose under section 667-C;

(3) Mailed or delivered to the state director of taxation;

(4) Mailed or delivered to the director of finance of the county where the unit is located;

(5) Posted on the unit or on such other real property of which the unit is a part; and

(6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5 or 667-21.5.

(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:

(B) Is distributed within the county where the [illegible] is located:

(ii) For a minimum of six months unless interrupted by strike, natural disaster, or

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

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

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

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

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

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

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

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

(d) The default under the association documents may be cured no later than three business days before the date of the public sale of the unit by paying the entire amount that would be owed to the association if the payments under the association documents had not been accelerated, plus the association's attorney's fees and costs, and all other fees and costs incurred by the association related to the default, unless otherwise agreed to between the association and the unit owner. There is no right to cure the default or any right of

redemption after that time. If the default is so cured, the public sale shall be canceled.

§667-H Authorized bidder; successful bidder. Any person, including the association, shall be authorized to bid for the unit at the public sale and to purchase the unit. The highest bidder who meets the requirements of the terms and conditions of the public sale shall be the successful bidder. The public sale shall be considered as being held when the unit is declared by the association as being sold to the successful bidder. When the public sale is held, the successful bidder at the public sale, as the purchaser, shall make a nonrefundable downpayment to the association of not less than ten per cent of the highest successful bid price. If the successful bidder is the association, the downpayment requirement may be satisfied by offset and a credit bid up to the amount of the lien debt.

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

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

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

(1) The association's attorney's fees and costs;

(2) The fees and costs of the power of sale foreclosure;

(3) The moneys owed to the association; and

(4) All other liens and encumbrances in the order of priority as a matter of law,

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

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

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

(1) Stating that the power of sale foreclosure was made pursuant to the power of sale provision in the law or association documents;

(2) Stating that the power of sale foreclosure was conducted as required by this part;

(3) Summarizing what was done by the association;

(4) Attaching a copy of the recorded notice of default and intention to foreclose; and

(5) Attaching a copy of the last public notice of the public sale.

(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 _____ and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the

(B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the notice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the

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

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

(E) A public notice of the public sale was initially published in the classified section of the _____, in accordance with section 667-F(d), Hawaii Revised Statutes, once each week for three consecutive weeks on the following dates: _____. A copy of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days

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

taxation, to the director of finance of the county where the unit is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default and intention to foreclose, and those dates were at least sixty days before the date of

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

(H) A public sale of the unit was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest

and

(I) At the time the public sale was held, the default

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

§667-L Recordation of affidavit, conveyance document; effect. (a) The affidavit required under section 667-K and the conveyance document shall be recorded no earlier than ten days after the public sale is held but not later than forty-five days after the public sale is held. The affidavit and the conveyance document may be recorded separately and on different days. After the recordation, the association shall mail or deliver a recorded copy to those persons entitled to receive the public notice of the public sale under section 667-F(c).

(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 [illegible] 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 an 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 [illegible] and any person claiming by, through, or under the [illegible] 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.

§667-M Recordation; full satisfaction of debt by borrower. [illegible] 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.

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

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

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

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

(4) Completing or attempting to complete nonjudicial foreclosure proceedings against a unit owner in violation of section 667-B(c)."

PART III

SECTION [illegible] Section 454M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

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

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

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

(A) The number of mortgage loans the servicer is

(B) The type and characteristics of loans serviced in

(C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-

(D) Information on loss mitigation activities, including details on workout arrangements

(E) Information on foreclosures commenced in this

(F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its

(G) Any other information that the commissioner may

(5) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer's business constitutes at least a twenty per cent share of the portion

of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall prohibit a mortgagee as defined by section [~~667-21~~] 667-1 or a mortgage servicer from contracting with a licensee that maintains an office in this State in conformity with this section for the purposes of addressing consumer inquiries or complaints and accepting service of process."

SECTION [illegible] Section 454M-10, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION [illegible] Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

" No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the

number of ____certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

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

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

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

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

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

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

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

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

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

(3) An agreement of sale for the sale of a leasehold time share interest. Any such agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;

(4) A lien or notice of lien pertaining to a leasehold time share interest in favor of a time share owners association,

an association of owners under chapter 514A or 514B, or a similar homeowner's association;

(5) A judgment, decree, order of court, attachment, writ, or other process against a leasehold time share interest;

(6) A mechanic's or materialman's lien or other lien upon a leasehold time share interest;

(7) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a leasehold time share interest and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to [~~section 667-5,~~] chapter 667 or otherwise;

(8) A power of attorney given by the owner of a leasehold time share interest or the vendor or vendee under an agreement of sale for the sale of a leasehold time share interest, a mortgagee or other lienor having a mortgage or lien upon a leasehold time share interest, or another party holding a claim or encumbrance against or an interest in a leasehold time share interest; or

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

SECTION [illegible] Section 501-263, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

(C) A correction deed, correction mortgage, or other document, instrument, or paper correcting a document, instrument, or paper registered

(D) A lien or claim of lien on a fee time share interest held or claimed by a time share owners association, an association of apartment owners, or other homeowners' association or a lien or claim on an interest in other deregistered land

(E) A lease that demises a fee time share interest or

(F) An order of court, attachment, writ, or other process against a fee time share interest or

(G) A mechanic's or materialman's lien or other lien upon a fee time share interest or interest in

(H) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to [~~a power of~~

~~sale under section 667-5,~~] chapter 667 or

(I) A power of attorney given by the owner of a fee time share interest or interest in other deregistered land or the vendor or vendee under an agreement of sale for the sale of a fee time share interest or interest in other deregistered land, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest or interest in other deregistered land, or another party holding a claim or encumbrance against or an interest in a fee time share

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

(3) Any declaration annexing property to, any declaration deannexing property from, any amendment or supplement to, correction of, or release or termination of, any of the

following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:

(A) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing or governing a time share plan, or the bylaws of a time share owners association, notice of time share plan, or

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

provided that if only some of the condominium apartments are included in the time share plan, then it shall be necessary to register, and to note on the certificate of title for any apartment not included in the time share plan:

(i) Any declaration annexing property to the

(ii) Any declaration deannexing property from the

(iii) Any instrument effecting a merger of two or more condominium projects or two or more

(iv) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in subparagraph (B)(i) through (iii), the declaration of condominium property regime, the bylaws of the association of apartment owners, the condominium map, or any

(C) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof, any declaration of merger and any

only some of the parcels of land covered by the declaration constitutes deregistered land, and if one or more of the remaining parcels constitute registered land, then it shall be necessary to

register, and to note on the certificate of title for any registered land:

(i) Any declaration annexing property to the

(ii) Any declaration deannexing property from the

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

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

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

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

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

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

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

fines, penalties, legal fees, or late

In any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws[,] or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed[,] by the apartment owner or any tenant of the apartment. If the association of apartment owners is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board of directors, acting on behalf of the association of apartment owners[,] and in the name of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

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

the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's share of common expenses and assessments beginning:

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

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

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

(4) Upon the recording of the instrument of conveyance,

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

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

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

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

"Completion" means:

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

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

"Regular monthly common assessments" shall not include:

(1) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section

(3) Interest assessed by the association of

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

SECTION Section 514B-146, Hawaii Revised Statutes, is amended as follows:

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

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

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

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

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association[~~, in like manner as a mortgage of real property.~~] and in the name of the association; provided that no association may foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws[~~,~~] or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed[~~,~~] by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association[~~,~~] and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common

expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

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

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

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

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

(4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the

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

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

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

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

"Completion" means:

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

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

"Regular monthly common assessments" does not include:

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

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

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

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

SECTION ~~[illegible]~~ Section 607-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

subsection (b)(1a) shall be deposited by the clerk of the circuit court as provided in section 667-53(a)(6).

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

SCHEDULE

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

(b) **PART I**

Action or proceeding, general:

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

(1a) Petition for conversion of nonjudicial foreclosure to judicial foreclosure..... $250

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

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

Trusts:

(4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F)

approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter..... $100

(5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter..... $100

(6) Accounting, this fee to be paid for each account filed and to include the settlement of the account..... $10

(7) Vesting order..... no charge under part I

(8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section no charge under part I

(8a) Registration of a trust, or release of registration, under chapter 560..... $3

(9) Any other proceeding relating to a trust..... $15

Conservatorship:

(10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter $100

(11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter..... . $15

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

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

Guardianship:

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

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

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

Family court cases:

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

(16) Adoption..... $100

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

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

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

SECTION [illegible] ~~[illegible]~~ Section 667-3, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION [illegible] ~~[illegible]~~ Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

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

(1) The foreclosure at the time foreclosure proceedings are begun[~~.~~]; and

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

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

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

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

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

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

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

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

~~"Approved housing counselor" means a housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services~~

~~pursuant to section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code, section 1701x.~~

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

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

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

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

~~(1) The foreclosing mortgagee;~~

~~(2) Any person that has an ownership interest in the promissory note on the mortgage agreement or a security interest represented by the mortgage for the subject property;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~"Served" means to have service of the notice of default and intention to foreclose made in accordance with the service of process~~

~~or the service of summons under the Hawaii rules of civil procedure, and under sections 634-35 and 634-36.~~]"

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

"[~~[~~]§667-21.5[~~]~~

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

(1) The foreclosure at the time foreclosure proceedings are begun[~~.~~]; and

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

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

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

SECTION ___. Section 667-22, Hawaii Revised Statutes, is amended as follows:

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

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

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

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

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

(4) The description of the default or, if the default is a monetary default, an itemization of the delinquent amount;

(5) The action required to cure the default, including the delinquent amount and the estimated amount of the

foreclosing mortgagee's attorney's fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing mortgagee by the deadline date;

(6) The date by which the default must be cured, which shall be at least sixty days after the date of the notice of default and intention to foreclose;

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

(8) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the mortgagee may publish the public notice of the public sale on a website maintained by the department, pursuant to section 667-27(d)(2);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The state director of taxation;

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

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

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

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

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

(b) If the default is not cured as required by the notice of default and intention to foreclose, the parties have not reached [~~a~~

~~settlement document pursuant to part V~~] an agreement to resolve the nonjudicial foreclosure and no report of noncompliance has been issued against the mortgagee under section 667-82, and the mortgagor has not elected to convert the foreclosure to a judicial action, the foreclosing mortgagee, without filing a court action and without going to court, may foreclose the mortgage under power of sale to sell the mortgaged property at a public sale."

SECTION ~~__~~ Section 667-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

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

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

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

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

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

SECTION ___ Section 667-27, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) to read:

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

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

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

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

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

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

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

[~~(7)~~] (6) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the

recordation of the notice of default and intention to foreclose under section 667-23;

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

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

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

2. By amending subsection (d) to read:

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

(1) Printed in not less than seven-point font and published in the classified section of a [~~daily~~] newspaper [~~having the largest~~] of general circulation [~~specifically~~] in the [~~county where the mortgaged property is located; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest general circulation specifically in the western or eastern half of the county, as the case may be, in which the property is located~~.] real property tax zone in which the mortgaged property 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) _____

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

(i) _____

(ii) For a minimum of six months unless interrupted by strike, natural disaster, or _____

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

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

(2) Not less than twenty-eight days before the date of the public sale, published on a website maintained by the

department; provided that the mortgaged property is owned by an owner-occupant."

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

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

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

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

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

"(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 mortgagee) ("foreclosing mortgagee") 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 II, Hawaii Revised Statutes);

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

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

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

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

(B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the notice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the

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

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

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

of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days

(F) The public notice of the public sale was sent to the mortgagor, to the borrower, to the state director of taxation, to the director of finance of the county where the mortgaged property is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default and intention to foreclose, and those dates were at least sixty days before the date of the public

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

[~~(H) Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooper~~

~~(I)~~] (H) A public sale of the mortgaged property was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of

[~~(J)~~] (I) At the time the public sale was held, the default was not cured and there was no circuit court foreclosure action pending in the circuit

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

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

"(a) The affidavit required under section 667-32 and the conveyance document shall be recorded [~~at any time~~] no earlier than ten days after the public sale is held but not later than forty-five days after the public sale is held. The affidavit and the conveyance document may be recorded separately and on different days. After the recordation, the foreclosing mortgagee shall mail or deliver a

recorded copy to those persons entitled to receive the public notice of the public sale under section 667-27(c)."

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

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

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

"**§667-41 Public information notice requirement.** [~~Beginning on September 1, 2011, all~~] (a) All financial institutions, mortgagees, lenders, business entities and organizations without limitation, and persons, who intend to use the power of sale foreclosure under this part, under the conditions required by this part, shall [~~also develop informational materials to educate and inform borrowers and mortgagors. These materials shall be made available to the public and provided to the mortgagors of all mortgage agreements entered into, including the borrowers at the time of application for a mortgage or loan, or other contract containing a power of sale foreclosure~~

~~provision. These materials, among other things, shall inform the borrower that the financial institution and other business entities and persons who are authorized under this part to exercise the power of sale foreclosure, in the event of the borrower's default, have the option of pursuing either a judicial or nonjudicial foreclosure as provided by law. These informational materials shall fully and completely explain these remedies in simple and understandable terms.~~]

provide the public information notice described in subsection (b) to the public, upon request, and to any applicant submitting a loan application where residential property is required to be used to secure the loan. The notice shall be provided to all applicants and all owners of the residential property (if different from the applicants) within three business days after the submission of a written loan application, or within three business days after the time residential property is required to be used to secure a loan, whether or not there is a written loan application. The purpose of the public information notice is to inform the public, applicants, and others that the financial institutions, mortgagees, lenders, organizations, and other business entities and persons who are authorized under this part to enforce the foreclosure rights in a mortgage, in the event of the borrower's default, have the option of pursuing either a judicial or nonjudicial foreclosure in the manner provided by law.

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

PUBLIC INFORMATION NOTICE PURSUANT TO

HAWAII REVISED STATUTES SECTION 667-41

WHAT IS FORECLOSURE?

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

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

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

STEP ONE: NOTICE OF DEFAULT. The first step in the foreclosure process is the Mortgagee usually sends you a written notice of default, which occurs after you are past due on your mortgage payment. The Mortgagee will tell you in the notice how much time you have to pay the required

amount that is past due and, by paying, will return your loan to good standing.

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

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

In a NONJUDICIAL FORECLOSURE, the process follows the procedures spelled out in Chapter 667 of the Hawaii Revised Statutes and in your mortgage. The nonjudicial procedures allow a Mortgagee to foreclose on and sell the property identified in the mortgage without filing a lawsuit or

court supervision. This nonjudicial foreclosure is also called a power of sale foreclosure. The Mortgagee starts the process by giving you a written notice of default and of the Mortgagee's intent to sell the property.

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

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

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

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

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

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

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

In a NONJUDICIAL FORECLOSURE, the Mortgagee distributes the proceeds from the sale. [illegible]

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

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

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

"[~~[~~]§667-53[~~]~~

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

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

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

(B) The conclusion of a mortgage foreclosure dispute resolution process conducted under part V,

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

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

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

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

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

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

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

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

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

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

(1) A caption setting forth the name of the court, the title of the action, and the file number; provided that the title of

the action shall include the names of the filing party as petitioner and the foreclosing party as the respondent;

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

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

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

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

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

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

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

"[~~[~~]§667-55[~~]~~]

(a) The foreclosure notice that is served as required under section [~~667-5 or~~] 667-22 shall include, in addition to the contents required under section [~~667-5 or~~] 667-22, a statement printed in not less than fourteen-point font as follows:

"IF THE PROPERTY BEING FORECLOSED IS IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A PERSON WHO, AT THE TIME THIS NOTICE IS SERVED, OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO HUNDRED DAYS) HAS THE RIGHT TO CONVERT A NONJUDICIAL FORECLOSURE PROCEEDING TO A JUDICIAL FORECLOSURE WHERE CLAIMS AND DEFENSES MAY BE CONSIDERED BY A COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE THE PROPERTY IS LOCATED,

WITHIN THIRTY DAYS AFTER SERVICE OF THIS NOTICE[~~.~~] OR WITHIN THIRTY DAYS AFTER THE COMPLETION OF MORTGAGE FORECLOSURE DISPUTE RESOLUTION CONDUCTED UNDER PART V OF CHAPTER 667 OF THE HAWAII REVISED STATUTES.

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

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

MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID FORECLOSURE OR TO MITIGATE THE EFFECTS OF FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF [~~AN OWNER-OCCUPANT FILES FOR CONVERSION,~~] THE NONJUDICIAL FORECLOSURE IS

CONVERTED TO A JUDICIAL FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

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

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

SECTION ___~~---~~ Section 667-56, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

(5) Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least [~~five~~] ten per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;

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

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

SECTION [illegible] Section 667-57, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§667-57[~~]~~] **Suspension of foreclosure actions by junior lienholders.** (a) Upon initiation of a foreclosure action pursuant to

part [~~I~~] IA or part II by a foreclosing mortgagee [~~as defined in section 667-21(b)~~], no junior lienholder shall be permitted to initiate or continue a nonjudicial foreclosure pursuant to part [~~I~~] II until the foreclosure initiated by the foreclosing mortgagee has been concluded by a judgment issued by a court pursuant to section [~~667-1,~~] 667-1.5, the recording of an affidavit after public sale pursuant to section [~~667-5 or~~] 667-33, or the filing of [~~a settlement document~~] an agreement under the mortgage foreclosure dispute resolution provisions of section 667-81.

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

(1) The junior lien foreclosure was initiated before the foreclosure action by the foreclosing mortgagee[~~.~~]; or

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

SECTION [~~1.~~] Section 667-58, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§667-58[~~]~~] **Valid notice**[~~.~~] (a) Any notices made pursuant to this chapter may be issued only by persons

authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement signed by that foreclosing mortgagee or lender and recorded at the bureau of conveyances identifying the agency or affiliate relationship and the authority granted or conferred to that agent or representative.

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

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

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

reference, in accordance with subsection (b), the appropriate affiliate statement of the foreclosing mortgagee or lender authorizing the mortgage servicer to act."

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

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

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

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

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

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

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

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

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

(5) Holding a public sale in violation of section 667-25;

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

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

(8) With regard to mortgage foreclosure dispute resolution under part V:

(A) Failing to provide notice of the availability of _____

(B) Participating in dispute resolution without authorization to negotiate a loan modification, or without access to a person so authorized, as _____

(C) Failing to provide required information or _____

(D) Completing a nonjudicial foreclosure if a neutral's closing report under section 667-82 indicates that the foreclosing mortgagee failed to comply with requirements of the mortgage _____

(9) Completing a nonjudicial foreclosure while a stay is in effect under section 667-83;

(10) Failing to distribute sale proceeds as required by section 667-31;

(11) Making any false statement in the affidavit of public sale required by section 667-32;

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

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

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

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

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

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

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

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

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

SECTION ~~[illegible]~~. Section 667-71, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

(b) This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise

under a declaration filed pursuant to chapter 421J, 514A, or 514B, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan."

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

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

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

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

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

"[~~[~~]**§667-75**[~~]~~] **Notice of dispute resolution availability required.** (a) A foreclosure notice served pursuant to section [~~667-5 or~~] 667-22(e) shall include notice that the mortgagee is required, at

the election of an owner-occupant, to participate in the mortgage foreclosure dispute resolution program pursuant to this part to attempt to avoid foreclosure or to mitigate damages where foreclosure is unavoidable.

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

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

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

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

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

(5) Contact information for all [~~local~~] approved housing counselors;

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

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

department that the mortgagor is an owner-occupant of the subject property, including supporting documentation;

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

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

SECTION ~~[illegible]~~ Section 667-76, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§667-76[~~]~~

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

(b) [~~Violation of this section shall constitute an unfair and deceptive act or practice subject to section 480-2.~~] A mortgagee who elects to publish a public notice of public sale electronically pursuant to section [illegible] 667-27(d)(2) or 667-F(d)(2) shall publish the

notice by filing the same with the department and paying a filing fee of _____, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-86."

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

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

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

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

(3) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including a description of acceptable

supporting documentation as required by section 667-78(a)(2);

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

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

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

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

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

(9) Contact information for the department.

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

SECTION ___ Section 667-78, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

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

(A) Pursuant ___

(B) _____

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

(3) A program fee of $300.

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

2. By amending subsection (c) to read:

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

SECTION ___ Section 667-79, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

(1) Notification of the date, time, and location of the dispute resolution session;

(2) An explanation of the dispute resolution process;

(3) Information about the dispute resolution program requirements; and

(4) Consequences and penalties for noncompliance.

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

2. By amending subsection (c) to read:

"(c) The written notification of a case opening under this section shall operate as a stay of the foreclosure proceeding in

accordance with section 667-83[~~,~~] and may be [~~filed or~~] recorded[~~, as appropriate, at the land court or bureau of conveyances~~]."

SECTION ___. Section 667-80, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

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

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

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

2. By amending subsection (c) to read:

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

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

(A) A copy of the promissory note, signed by the mortgagor, including any endorsements, allonges, amendments, or riders to the note evidencing the

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

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

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

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

(B) Any records or correspondence available which may

(C) Any records or correspondence available evidencing

(D) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or

(E) Names and contact information for approved housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the

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

SECTION [illegible] Section 667-81, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) If, despite the parties' participation in the dispute resolution process and compliance with the requirements of this part, the parties are not able to come to an agreement, the neutral shall file a closing report with the department that the parties met the program requirements. The mortgagee may [~~file or~~] record the report [~~at the bureau of conveyances or the land court, as appropriate~~]. Upon recording of the report pursuant to this subsection, the foreclosure process shall resume along the timeline as it existed on

the date before the mortgagor elected dispute resolution, and may proceed as otherwise provided by law. The mortgagee shall notify the mortgagor of the recording date and document number of this report and the deadline date to cure default in an amended foreclosure notice. Nothing in this subsection shall be construed to require the neutral to wait the full sixty days allotted for dispute resolution to determine that the parties were unable to reach an agreement and file a report.

(c) If the parties have complied with the requirements of this part and have reached an agreement, the agreement shall be memorialized in [~~a settlement document~~] writing and signed by the parties or their authorized representatives. [~~If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral. If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session.~~] The parties shall be responsible for drafting any agreement reached[~~, and for filing or recording with the land court or the bureau of conveyances, as appropriate,~~] and enforcing the [~~settlement document.~~] agreement. [~~The neutral shall file the settlement document with the neutral's closing report.~~] The [~~settlement document~~] agreement shall be a contract between the parties and shall be enforceable in a private

contract action in a court of appropriate jurisdiction in the event of breach by either party. If the [~~settlement document~~] agreement allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-83 shall be released upon [~~filing or recording the settlement document with the land court or bureau of conveyances, as appropriate.~~] the recordation of the neutral's closing report. Thereafter, the office of the assistant registrar of the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate.

(d) If the parties to a dispute resolution process reach an agreement which resolves the matters at issue in the dispute resolution before the first day of the scheduled dispute resolution session scheduled pursuant to this section, the parties shall notify the neutral by that date. The neutral shall thereafter issue a closing report that the parties have reached an agreement prior to the commencement of a dispute resolution session. If the agreement provides for foreclosure, the parties shall memorialize the agreement in a writing [~~which shall be~~] signed by both parties [~~and provided to the neutral. Any agreement authorizing foreclosure shall be attached to the neutral's closing report~~]. The parties may [~~file or~~] record the report [~~at the bureau of conveyances or the land court, as appropriate~~]. If the agreement authorizes foreclosure, the stay of the foreclosure under section 667-83 shall be released upon [~~filing or recording with the land court or bureau of conveyances, as appropriate.~~] the recordation of the report. Thereafter, the land court or bureau of conveyances may record a notice of sale or other

conveyance document, as appropriate. No fees shall be refunded if the parties come to an agreement prior to a dispute resolution session conducted pursuant to this part."

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

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

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

(A) Participation in dispute resolution without the authority to negotiate a loan modification or without access at all stages of the dispute resolution process to a person who is so

(B) Failure to provide the required information or

(C) Refusal to cooperate or participate in dispute

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

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

(A) Failure to provide the required information or

(B) Refusal to cooperate or participate in dispute resolution[~~,~~ _

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

SECTION ~~[illegible]~~ Section 667-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

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

SECTION ~~[illegible]~~ Section 667-86, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All persons who record an affidavit in the office of the assistant registrar of the land court, pursuant to section 501-118, or who record a conveyance document in the bureau of conveyances for an

owner-occupied property subject to a nonjudicial power of sale foreclosure shall pay a fee of $100, which shall be deposited into the mortgage foreclosure dispute resolution special fund on a quarterly basis."

PART IV

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

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

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

[~~(2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act;~~

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

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

~~(5) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and~~

~~(6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compliance resolution fund~~

~~established under section 26-9(o), Hawaii Revised Statutes.~~]"

PART V

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

["~~§667-5 (a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee's successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:~~

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

~~(A) By serving, not less than twenty-one days before the date of sale, written notice of intent to foreclose on all persons entitled to notice under this part in the same manner as service of a civil complaint under chapter 634 and the Hawaii~~

~~case of nonjudicial foreclosure of a lien by an association against a mortgagor who is not an owner-occupant, the association shall mail the~~

~~notice by certified or registered mail, not less than twenty-one days before the date of sale, to:~~

~~(i) The unit owner at the address shown in the records of the association and, if different, at the address of the unit being~~

~~(ii) All mortgage creditors whose names are known~~

~~(B) By publication of the notice once in each of three successive weeks, constituting three publications with the last publication to be not less than fourteen days before the day of sale, in a daily newspaper having the largest general circulation in the specific county in which the mortgaged~~

~~in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest circulation expressly in the eastern or western half of the county, corresponding to the location of the~~

~~(2) Give notice of the mortgagor's right to elect to participate in the mortgage foreclosure dispute resolution program~~

~~pursuant to section 667-75 or to convert the nonjudicial power of sale foreclosure to a judicial foreclosure pursuant to section 667-53; and~~

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

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

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

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

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

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

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

~~(d) Any sale, of which notice has been given pursuant to subsections (a) and (b) may be postponed from time to time by public announcement made by the mortgagee or by a person acting on the mortgagee's behalf. Upon request made by any person who is entitled to notice pursuant to section 667-5.5 or 667-6, or this section, the mortgagee or person acting on the mortgagee's behalf shall provide the~~

~~date and time of a postponed auction, or if the auction is canceled, information that the auction was canceled. The mortgagee, within thirty days after selling the property in pursuance of the power, shall file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.~~

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

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

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

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

SECTION ~~[illegible]~~ Section 667-5.7, Hawaii Revised Statutes, is repealed.

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

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

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

~~creditors, not less than seven calendar days prior to the date of sale.~~

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

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

["~~§667-7 (a) The notice of intention of foreclosure shall contain:~~

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

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

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

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

["~~**§667-8 Affidavit as evidence, when.**~~ ~~If it appears by the affidavit that the affiant has in all respects complied with the requirements of the power of sale and the statute, in relation to all things to be done by the affiant before selling the property, and has sold the same in the manner required by the power, the affidavit, or a~~

~~duly certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.~~"]

SECTION ___. Section 667-14, Hawaii Revised Statutes, is repealed.

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

SECTION ___. Section 667-15, Hawaii Revised Statutes, is repealed.

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

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

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

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

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

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

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

SECTION [illegible] Section 667-21.6, Hawaii Revised Statutes, is repealed.

["~~[§667-21.6]~~

~~If a unit owner notifies the association or its attorney by certified mail return receipt requested or by hand delivery within five business days following a response to the unit owner's request for the amount to cure a default, together with an estimated amount of the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing association, that it intends to cure the default, the association shall allow sixty calendar days to the unit owner to cure the default. The association shall not reject a reasonable payment plan for cure of the default; provided that a reasonable plan shall~~

~~require the owner to pay at a minimum the current maintenance fee and some amount owed on the past due balance. From and after the date that the unit owner gives written notice to the association of its intent to cure the delinquency, any nonjudicial foreclosure of the lien shall be stayed pending the sixty-day period or a longer period that is agreed upon by the parties.~~"]

SECTION ___. Section 667-26, Hawaii Revised Statutes, is repealed.

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

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

SECTION ___. Section 667-50, Hawaii Revised Statutes, is repealed.

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

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

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

SECTION ___. Section 667-72, Hawaii Revised Statutes, is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION [illegible] In codifying the new sections added by sections 2 and [illegible] of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION ___. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ___. This Act shall take effect on _____ provided that:

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