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# A BILL FOR AN ACT

RELATING TO MEDIATION AFFECTING JUDICIAL FORECLOSURE.

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

1           SECTION 1. The legislature finds that Act 48, Session Laws  
2 of Hawaii 2011, among other things established a mortgage  
3 foreclosure dispute resolution program to require mortgagees, at  
4 the mortgagor's election and prior to conducting a public sale  
5 of the subject residential property, to participate in dispute  
6 resolution to negotiate an agreement to avoid foreclosure or  
7 mitigate damages in cases where foreclosure is unavoidable.  
8 Application of the dispute resolution program is limited to  
9 nonjudicial foreclosures conducted by power of sale.

10           Following the commencement of the dispute resolution  
11 program, many mortgagees bypassed the program by instead  
12 pursuing foreclosures in court. Consequently, the rate of  
13 judicial foreclosures rose dramatically while the dispute  
14 resolution program remained dormant. The principal reason  
15 mortgagees cited for their refusal to use the nonjudicial  
16 foreclosure process and, as a result, the dispute resolution  
17 program, was the risk of incurring significant penalties under  
18 section 667-60, Hawaii Revised Statutes, relating to unfair or



1 deceptive acts or practices, for any violation of the mortgage  
2 foreclosure law. Mortgagees expressed concern about potentially  
3 incurring penalties for minor violations of the mortgage  
4 foreclosure law, such as missed deadlines or using the wrong  
5 font sizes on printed materials. Hence, mortgagees largely  
6 opted to pursue foreclosures under the supervision of a court.

7 In response to the mortgagees' concerns and to ensure the  
8 availability of both the nonjudicial foreclosure process and the  
9 dispute resolution program, Act 182, Session Laws of Hawaii  
10 2012, among other things specified the categories of conduct  
11 that expressly constitute an unfair or deceptive act or  
12 practice, in an effort to narrow the application of this  
13 provision in the foreclosures law. However, the legislature  
14 finds that more action should be taken to make the dispute  
15 resolution program available to all homeowners facing the  
16 prospect of losing their homes to foreclosure, including  
17 judicial foreclosures.

18 The purpose of this Act is to assist homeowners at risk of  
19 foreclosure and expand the availability of mandatory mortgage  
20 foreclosure dispute resolution by requiring mortgagees, at the  
21 mortgagor's election, to participate in mediation to avoid  
22 foreclosure or to mitigate damages from foreclosure prior to



1 filing a judicial foreclosure action for property that has been  
2 the mortgagor's primary residence for a specified period. This  
3 Act also applies to judicial foreclosure actions filed prior to  
4 the effective date of this Act and pending an initial court  
5 hearing. It is the intent of the legislature that nothing in  
6 this Act be construed as affecting the dispute resolution  
7 provisions for nonjudicial foreclosures, as provided in part V  
8 of chapter 667, Hawaii Revised Statutes, as those provisions  
9 existed on the day prior to the effective date of this Act.

10 SECTION 2. Chapter 667, Hawaii Revised Statutes, is  
11 amended by adding a new section to part V to be appropriately  
12 designated and to read as follows:

13 "§667- Mortgagee's filing of notice with the mortgagor;  
14 loss mitigation options. A mortgagee shall engage in early  
15 intervention measures that shall comply with title 12 Code of  
16 Federal Regulations section 1024.39, and loss mitigation  
17 measures that shall comply with title 12 Code of Federal  
18 Regulations section 1024.41, including:

19 (1) Establishing or making a good faith effort to  
20 establish live contact with the delinquent mortgagor  
21 no later than the thirty-sixth day of the mortgagor's  
22 delinquency and, promptly after establishing live



1 contact, informing the mortgagor about the  
2 availability of loss mitigation options, if  
3 appropriate; and

4 (2) Providing written notice to the delinquent mortgagor  
5 no later than the forty-fifth day of the mortgagor's  
6 delinquency. The written notice shall include:

7 (A) A statement encouraging the mortgagor to contact  
8 the mortgagee;

9 (B) The telephone number and mailing address of the  
10 mortgagee;

11 (C) A statement providing a brief description of  
12 examples of loss mitigation options that may be  
13 available from the mortgagee, if applicable;

14 (D) Either application instructions or a statement  
15 informing the mortgagor how to obtain more  
16 information about loss mitigation options from  
17 the mortgagee, if applicable; and

18 (E) The website to access either the list from the  
19 division of financial institutions or the list  
20 from the Department of Housing and Urban  
21 Development containing homeownership counselors  
22 or counseling organizations, and the Department



1                   of Housing and Urban Development's toll-free  
2                   telephone number to access homeownership  
3                   counselors or counseling organizations."

4           SECTION 3. Section 667-1, Hawaii Revised Statutes, is  
5 amended by amending the definitions of "owner-occupant" and  
6 "serve" to read as follows:

7           ""Owner-occupant" means a person, at the time that a notice  
8 of default and intention to foreclose is served on the mortgagor  
9 under the power of sale[+], or at the time a notice of dispute  
10 resolution availability is served on the mortgagor pursuant to  
11 section 667-75(b), as applicable:

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

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

19           "Serve", when referring to providing notice of intention to  
20 foreclose or notice of default and intention to foreclose  
21 pursuant to a nonjudicial foreclosure, or when referring to  
22 providing notice of dispute resolution availability under



1 section 667-75(b), means to have service of the notice [ef  
 2 ~~default and intention to foreclose~~] made in accordance with the  
 3 service of process or the service of summons under the Hawaii  
 4 rules of civil procedure and under sections 634-35 and 634-36,  
 5 excluding however, any return or affidavit of service  
 6 obligations required therein."

7 SECTION 4. Section 667-17, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9 "[+]§667-17[+] **Attorney affirmation in judicial**  
 10 **foreclosure.** Any attorney who files on behalf of a mortgagee  
 11 seeking to foreclose on a residential property under this part  
 12 shall sign and submit an affirmation that the attorney has  
 13 verified the accuracy of the documents submitted, under penalty  
 14 of perjury and subject to applicable rules of professional  
 15 conduct. The affirmation shall be in substantially the  
 16 following form:

17  
 18 " \_\_\_\_\_ CIRCUIT COURT OF THE STATE OF HAWAII

19 \_\_\_\_\_  
 20 Plaintiff,  
 21  
 22 v.  
 23  
 24 Defendant(s)

**AFFIRMATION**



1  
2 Mortgaged Premises:  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5

6 *Note: During and after August 2010, numerous and widespread insufficiencies*  
7 *in foreclosure filings in various courts around the nation were reported by major*  
8 *mortgage lenders and other authorities, including failure to review documents*  
9 *and files to establish standing and other foreclosure requisites; filing of notarized*  
10 *affidavits that falsely attest to such review and to other critical facts in the*  
11 *foreclosure process; and "robosignature" of documents.*  
12

13 \* \* \*

14  
15 [\_\_\_\_\_] , Esq., pursuant to Hawaii Revised Statutes §667-17 and under the  
16 penalties of perjury, affirms as follows:  
17

- 18 1. I am an attorney at law duly licensed to practice in the State of Hawaii and am affiliated  
19 with the Law Firm of \_\_\_\_\_, the attorneys of record for Plaintiff in the  
20 above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying  
21 action, as well as the proceedings had herein.  
22  
23 2. On [date], I communicated with the following representative or representatives of  
24 Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents  
25 and records relating to this case for factual accuracy; and (b) confirmed the factual  
26 accuracy of the allegations set forth in the Complaint and any supporting affidavits or  
27 affirmations filed with the Court, including any supporting affidavits or affirmations  
28 confirming that the plaintiff notified, offered, or engaged in any loss mitigation  
29 procedures in compliance with 12 C.F.R. 1024.41, as well as the accuracy of the  
30 notarizations contained in the supporting documents filed therewith.  
31

32

Name	Title
_____	_____
_____	_____
_____	_____

33  
34  
35  
36

- 37 3. Based upon my communication with [persons specified in item 2], as well as upon my  
38 own inspection and other reasonable inquiry under the circumstances, I affirm that, to the  
39 best of my knowledge, information, and belief, the Summons, Complaint, and other  
40 papers filed or submitted to the Court in this matter contain no false statements of fact or  
41 law and that plaintiff has legal standing to bring this foreclosure action. I understand my  
42 continuing obligation to amend this Affirmation in light of newly discovered material  
43 facts following its filing.  
44



1 4. I am aware of my obligations under Hawaii Rules of Professional Conduct.  
2  
3

4 \_\_\_\_\_  
4 DATED:  
5

6 *N.B.: Counsel may augment this affirmation to provide explanatory details,*  
7 *and may file supplemental affirmations or affidavits for the same purpose."*  
8

9 SECTION 5. Section 667-18, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+]§667-18[+] **Attorney affirmation in judicial**  
12 **foreclosure.** An attorney who files a complaint in a mortgage  
13 foreclosure action shall affirm in writing, under penalty of  
14 perjury, that to the best of the attorney's knowledge,  
15 information, and belief the allegations contained in the  
16 complaint are warranted by existing law and have evidentiary  
17 support[-], including any supporting affidavits or affirmations  
18 confirming that the plaintiff notified, offered, or engaged in  
19 any loss mitigation procedures in compliance with title 12 Code  
20 of Federal Regulations section 1024.41."

21 SECTION 6. Section 667-60, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:

23 "(a) Any foreclosing mortgagee who engages in any of the  
24 following violations of this chapter shall have committed an  
25 unfair or deceptive act or practice under section 480-2:





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



1 or without access to a person so authorized, as  
2 required by section 667-80(a)(1);

3 (C) Failing to provide required information or  
4 documents as required by section 667-80(c);

5 (D) Completing a nonjudicial foreclosure if a  
6 neutral's closing report under section 667-82  
7 indicates that the foreclosing mortgagee failed  
8 to comply with requirements of the mortgage  
9 foreclosure dispute resolution program;

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

12 (10) Filing a foreclosure action under part IA without  
13 compliance with part V;

14 [~~10~~] (11) Failing to distribute sale proceeds as required  
15 by section 667-31;

16 [~~11~~] (12) Making any false statement in the affidavit of  
17 public sale required by section 667-32;

18 [~~12~~] (13) Attempting to collect a deficiency in violation  
19 of section 667-38; and

20 [~~13~~] (14) Failing to file a foreclosure notice with the  
21 department as required by section 667-76(a)."

22 SECTION 7. Section 667-71, Hawaii Revised Statutes, is



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

2 " (a) This part shall apply to [~~nonjudicial~~]:

3 (1) Nonjudicial foreclosures conducted by power of sale  
4 under part II [~~of~~]; and

5 (2) Mortgagees seeking to file a foreclosure action under  
6 part IA; provided that this part shall not apply to  
7 mortgagees engaged in loss mitigation procedures in  
8 compliance with title 12 Code of Federal Regulations  
9 section 1024.41; provided further that for purposes of  
10 this paragraph, "loss mitigation" means a full range  
11 of solutions that may avert the loss of a mortgagor's  
12 property to foreclosure, increased costs to the  
13 mortgagee, or both, and commonly consists of the  
14 following general types of agreements or a combination  
15 of them: loan modification, loan refinance,  
16 forbearance, short sale, or surrender of the property  
17 in full satisfaction;

18 for residential [~~real~~] property that is occupied by one or more  
19 mortgagors who are owner-occupants."

20 SECTION 8. Section 667-74, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§667-74 Availability of dispute resolution required**  
2 **before foreclosure.** Before a public sale may be conducted  
3 pursuant to section 667-25 or a foreclosure action under part IA  
4 may be filed for a residential property that is occupied by an  
5 owner-occupant, the [~~foreclosing~~] mortgagee, at the election of  
6 the owner-occupant, shall participate in the mortgage  
7 foreclosure dispute resolution program under this part to  
8 attempt to negotiate an agreement that avoids foreclosure or  
9 mitigates damages in cases where foreclosure is unavoidable."

10           SECTION 9. Section 667-75, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           **"§667-75 Notice of dispute resolution availability**  
13 **required.** (a) A foreclosure notice served pursuant to section  
14 667-22(e) shall include notice that the mortgagee is required,  
15 at the election of an owner-occupant, to participate in the  
16 mortgage foreclosure dispute resolution program pursuant to this  
17 part to attempt to avoid foreclosure or to mitigate damages  
18 where foreclosure is unavoidable.

19           (b) A mortgagee seeking to file a foreclosure action under  
20 part IA against residential property shall first serve notice to  
21 the owner-occupant that the mortgagee is required, at the  
22 election of the mortgagor, to participate in the mortgage



1 foreclosure dispute resolution program pursuant to this part to  
2 attempt to avoid foreclosure or to mitigate damages where  
3 foreclosure is unavoidable.

4 ~~[(b)]~~ (c) The notice required by ~~[subsection]~~ subsections  
5 (a) and (b) shall be printed in not less than fourteen-point  
6 font and include:

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



- 1           counselors;
- 2           (7) A statement that the mortgagor electing to participate
- 3           in the mortgage foreclosure dispute resolution program
- 4           shall provide a certification under penalty of perjury
- 5           to the department that the mortgagor is an owner-
- 6           occupant of the subject property, including supporting
- 7           documentation;
- 8           (8) A general description of the information that an
- 9           owner-occupant electing to participate in the mortgage
- 10          foreclosure dispute resolution program is required to
- 11          provide to participate in the program as described
- 12          under section 667-80(c)(2);
- 13          (9) A statement that the owner-occupant shall elect to
- 14          participate in the mortgage foreclosure dispute
- 15          resolution program pursuant to this part no later than
- 16          thirty days after the department's mailing of the
- 17          ~~notice~~ notification required under section 667-77 or
- 18          the right shall be waived."

19          SECTION 10. Section 667-76, Hawaii Revised Statutes, is  
20          amended by amending subsection (a) to read as follows:

21          "(a) Within three days after a mortgagee serves [a]:

1           (1) A foreclosure notice on an owner-occupant pursuant to  
2                    section 667-22[7]; or

3           (2) Notice of dispute resolution availability on an owner-  
4                    occupant pursuant to section 667-75(b);

5 the mortgagee shall file the [~~foreclosure~~] notice with the  
6 department and pay a filing fee of \$250, which shall be  
7 deposited into the mortgage foreclosure dispute resolution  
8 special fund established under section 667-86."

9           SECTION 11. Section 667-77, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§667-77 Notification to mortgagor by department.** Within  
12 ten days after the mortgagee's filing of a notice [~~of default~~  
13 ~~and intention to foreclose~~] with the department[7] pursuant to  
14 667-76(a), the department shall mail a written notification by  
15 registered or certified mail to the mortgagor that [a] the  
16 notice [~~of default and intention to foreclose~~] has been filed  
17 with the department. The notification shall inform the  
18 mortgagor of an owner-occupant's right to elect to participate  
19 in the foreclosure dispute resolution program and shall include:

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

22           (2) A form for an owner-occupant to elect or to waive



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

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

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

21 (5) A description of the information required under  
22 section 667-80(c)(2) that the owner-occupant shall





1 provide to the mortgagee and the neutral assigned to  
2 the dispute resolution;

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

7 (7) Contact information for all approved housing  
8 counselors;

9 (8) Contact information for all approved budget and credit  
10 counselors; and

11 (9) Contact information for the department.

12 The notification shall be mailed to the subject property address  
13 and any other addresses for the mortgagor as provided in the  
14 mortgagee's notice of dispute resolution under section 667-75  
15 and, if applicable, the foreclosure notice under section  
16 667-22(a)."

17 SECTION 12. Section 667-78, Hawaii Revised Statutes, is  
18 amended by amending subsections (b) and (c) to read as follows:

19 "(b) If the completed form and fee are not received within  
20 the required time period, the owner-occupant shall be deemed to  
21 have waived any right to participate in the mortgage foreclosure  
22 dispute resolution program with respect to the subject property



1 and the [~~foreclosure~~] notice filed with the department [-]  
2 pursuant to section 667-76(a)(1) or (2).

3 (c) If the owner-occupant does not elect to participate in  
4 dispute resolution pursuant to this part, the department shall  
5 notify the mortgagee within ten days of receiving an election  
6 form indicating nonelection or the termination of the thirty-day  
7 time period for election. After receiving the department's  
8 notification, the mortgagee may proceed with [~~the~~]:

9 (1) The nonjudicial foreclosure process according to the  
10 process provided in part II [~~of this chapter~~]; or

11 (2) Filing a foreclosure action under part IA,  
12 as applicable."

13 SECTION 13. Section 667-79, Hawaii Revised Statutes, is  
14 amended by amending subsection (c) to read as follows:

15 "(c) [~~The~~] For nonjudicial foreclosures, written  
16 notification of a case opening under this section shall operate  
17 as a stay of the foreclosure proceeding in accordance with  
18 section 667-83 and may be recorded."

19 SECTION 14. Section 667-80, Hawaii Revised Statutes, is  
20 amended by amending subsection (c) to read as follows:

21 "(c) The parties shall comply with all information  
22 requests from the department or neutral. No less than fifteen



1 days prior to the first day of the scheduled dispute resolution  
2 session:

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

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

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

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

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

19 (A) Documentation showing income qualification for a  
20 loan modification, including any copies of pay  
21 stubs, W-2 forms, social security or disability  
22 income, retirement income, child support income,



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



1 SECTION 15. Section 667-81, Hawaii Revised Statutes, is  
2 amended by amending subsections (b), (c), and (d) to read as  
3 follows:

4 "(b) If, despite the parties' participation in the dispute  
5 resolution process and compliance with the requirements of this  
6 part, the parties are not able to come to an agreement, the  
7 neutral shall file a closing report with the department that the  
8 parties met the program requirements. The mortgagee may record  
9 the report. Upon recording of the report pursuant to this  
10 subsection~~[, the]~~:

11 (1) The nonjudicial foreclosure process shall resume along  
12 the timeline as it existed on the date before the  
13 mortgagor elected dispute resolution, and may proceed  
14 as otherwise provided by law~~[,]~~; or

15 (2) The mortgagee may proceed with filing a foreclosure  
16 action under part IA;

17 as applicable. The mortgagee shall notify the mortgagor of the  
18 recording date and document number of this report and, in the  
19 case of nonjudicial foreclosure, the deadline date to cure  
20 default in an amended foreclosure notice. Nothing in this  
21 subsection shall be construed to require the neutral to wait the  
22 full sixty days allotted for dispute resolution to determine



1 that the parties were unable to reach an agreement and file a  
2 report.

3 (c) If the parties have complied with the requirements of  
4 this part and have reached an agreement, the agreement shall be  
5 memorialized in writing and signed by the parties or their  
6 authorized representatives. The parties shall be responsible  
7 for drafting any agreement reached and enforcing the agreement.  
8 The agreement shall be a contract between the parties and shall  
9 be enforceable in a private contract action in a court of  
10 appropriate jurisdiction in the event of breach by either party.  
11 If the agreement allows for foreclosure or other transfer of the  
12 subject property, the stay of the foreclosure under section  
13 667-83, where applicable, shall be released upon the recordation  
14 of the neutral's closing report. Thereafter, the office of the  
15 assistant registrar of the land court or bureau of conveyances  
16 may record a notice of sale or other conveyance document, as  
17 appropriate.

18 (d) If the parties to a dispute resolution process reach  
19 an agreement [~~which~~] that resolves the matters at issue in the  
20 dispute resolution before the first day of the scheduled dispute  
21 resolution session scheduled pursuant to this section, the  
22 parties shall notify the neutral by that date. The neutral



1 shall thereafter issue a closing report that the parties have  
2 reached an agreement prior to the commencement of a dispute  
3 resolution session. If the agreement provides for foreclosure,  
4 the parties shall memorialize the agreement in writing, which  
5 shall be signed by both parties. The parties may record the  
6 report. If the agreement authorizes foreclosure, the stay of  
7 the foreclosure under section 667-83, where applicable, shall be  
8 released upon the recordation of the report. Thereafter, the  
9 land court or bureau of conveyances may record a notice of sale  
10 or other conveyance document, as appropriate. No fees shall be  
11 refunded if the parties come to an agreement prior to a dispute  
12 resolution session conducted pursuant to this part."

13 SECTION 16. Section 667-82, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) If the neutral determines that the noncompliance was  
16 unjustified as a result of circumstances within a party's  
17 control, sanctions may be imposed on the noncompliant party as  
18 follows:

19 (1) Sanctions against a mortgagee for unjustified  
20 noncompliance with the program shall include [a]:

21 (A) A stay of the foreclosure under section 667-83;

22 or



1           (B) Continuance of the bar against filing a  
 2           foreclosure action under part IA for the subject  
 3           property, pursuant to section 667-74(2), until  
 4           the requirements of this part are met,  
 5           as applicable, and a fine payable to the owner-  
 6           occupant not to exceed \$1,500; or

7           (2) Sanctions against an owner-occupant for unjustified  
 8           noncompliance with the program shall include [a]:

9           (A) A removal of the stay of the foreclosure pursuant  
 10           to section 667-83(b); or

11           (B) Authorization for the mortgagee to proceed with  
 12           filing a foreclosure action under part IA,  
 13           as applicable, and a fine payable to the mortgagee not  
 14           to exceed \$1,500."

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

17           "(a) [The] In the case of nonjudicial foreclosure, written  
 18           notification of a case opening under section 667-79 shall  
 19           operate as a stay of the foreclosure proceeding and may be  
 20           recorded; provided that:

21           (1) The written notification shall not act as a stay on a  
 22           foreclosure proceeding by an association unless the





1 association has been provided notice pursuant to  
2 sections 667-5.5, 667-21.5, or 667-79; and

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

7 SECTION 18. (a) This Act shall not apply to mortgagees  
8 who have filed a judicial foreclosure action under part IA of  
9 chapter 667, Hawaii Revised Statutes, at any time prior to  
10 July 1, 2013, except as provided in this section.

11 (b) The department of commerce and consumer affairs shall  
12 implement the amendments made to the mortgage foreclosure  
13 dispute resolution program pursuant to this Act no later than  
14 July 1, 2013, whereupon:

15 (1) All judicial foreclosure actions filed under part IA  
16 of chapter 667, Hawaii Revised Statutes, prior to  
17 July 1, 2013, for "residential property" occupied by  
18 "owner-occupants", as those terms are defined in  
19 section 667-1, Hawaii Revised Statutes, as amended by  
20 this Act, and for which no court hearing has been  
21 conducted as of July 1, 2013, nor will be conducted



1 for at least the days immediately following that  
2 date, shall be immediately suspended; and

3 (2) All mortgagees who filed a judicial foreclosure action  
4 described in paragraph (1) shall comply with the  
5 requirements of part V of chapter 667, Hawaii Revised  
6 Statutes, as amended by this Act, in the same manner  
7 and under the same conditions, to the extent feasible,  
8 as prescribed by that part for a mortgagee seeking to  
9 file a judicial foreclosure action.

10 (c) A judicial foreclosure action shall remain suspended  
11 under subsection (b) until the satisfaction of any requirement  
12 or condition under part V of chapter 667, Hawaii Revised  
13 Statutes, as amended by this Act, entitling a mortgagee to file  
14 a judicial foreclosure action, including as provided under  
15 sections 667-78(c), 667-81, and 667-82(b), Hawaii Revised  
16 Statutes, as amended by this Act.

17 (d) All mortgagees to whom this section applies shall be  
18 subject to all penalties for noncompliance with part V of  
19 chapter 667, Hawaii Revised Statutes, as amended by this Act,  
20 including as provided under sections 667-60(a) and 667-82(b),  
21 Hawaii Revised Statutes, as amended by this Act.



1 SECTION 19. Except as provided in section 18 of this Act,  
2 this Act does not affect rights and duties that matured,  
3 penalties that were incurred, and proceedings that were begun  
4 before its effective date.

5 SECTION 20. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 21. This Act shall take effect on July 1, 2050.

8



**Report Title:**

Mortgage Foreclosures; Judicial Foreclosure Actions for Residential Property; Mandatory Dispute Resolution; Mediation

**Description:**

Expands the application of mandatory mortgage foreclosure dispute resolution by requiring mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or mitigate damages from foreclosure prior to filing a judicial foreclosure action for property that has been the mortgagor's primary residence for a specified period. Applies the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this bill and pending an initial court hearing. Exempts the dispute resolution requirement to judicial foreclosure actions if the mortgagee engages in loss mitigation procedures with the mortgagor. Establishes notification requirements for a mortgagee to notify a mortgagor with respect to loss mitigation options. Requires that an attorney affirm that a mortgagee engaged in loss mitigation procedures with the mortgagor when filing for a judicial foreclosure action. Effective 07/01/50. (SD2)

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

