

A Bill for an Act Relating to Foreclosures.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . ALTERNATE POWER OF SALE FORECLOSURE PROCESS**

**§667-A Alternate power of sale process; definitions.** (a) The 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.

(b) As used in this part:

“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.

“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.

“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.

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

“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.

“Open house” means a public showing of the mortgaged property during a scheduled time period.

“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.

“Served” means to have service of the notice of default 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.

**§667-B Notice of default; contents; distribution.** (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 addressed to the mortgagor, the borrower, and any guarantor. The notice of default shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of the mortgagor, the borrower, and any guarantor;
- (3) The address or a description of the location of the mortgaged property, and the tax map key number of the mortgaged property;
- (4) The description of the default, and if the default is a monetary default, an itemization of the delinquent amount shall be given;
- (5) The action that must be taken to cure the default, including the amount to cure the default, together with the estimated amount of the foreclosing mortgagee’s attorney’s fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default by the deadline date;
- (6) The date by which the default must be cured, which deadline date shall be at least sixty days after the date of the notice of default;
- (7) That if the default is not cured by the deadline date stated in the notice of default, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will be 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; and
- (8) The name, address in the State, and the telephone number in the State of the person representing the foreclosing mortgagee.

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

“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 SO AGREE. TO SHOW THAT ALL OWNERS AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER, ALL OWNERS MUST SIGN A LETTER SHOWING THEY AGREE. ALL OWNERS MUST SEND THE SIGNED LETTER 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."

- (c) The foreclosing mortgagee shall have the notice of default served on:
  - (1) The mortgagor and the borrower;
  - (2) Any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-C;
  - (3) The state director of taxation;
  - (4) The director of finance of the county where the mortgaged property is located; and
  - (5) Any other person entitled to receive notice under section 667-5.5.

**§667-C Recordation of notice of default.** Before the deadline date in the notice of default, the notice of default in a recordable form shall be recorded 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 shall have the same effect as a notice of pendency of action. From and after the recordation of the notice of default, 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.

**§667-D Cure of default.** (a) If the default is cured as required by the notice of default, the foreclosing mortgagee shall rescind the notice of default. Within fourteen days of the date of the cure, the foreclosing mortgagee shall so notify any person who was served with the notice of default. If the notice of default was recorded, a release of the notice of default shall be recorded.

(b) If the default is not cured as required by the notice of default, 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.

**§667-E Date, place of public sale of mortgaged property.** (a) The public sale of the mortgaged property 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-G; or
- (2) At least fourteen days after the date of the publication of the third public notice advertisement under section 667-G.

(b) The public sale of the mortgaged property shall be held in the county where the mortgaged property is located. However, if the borrower, the mortgagor, and the foreclosing mortgagee all agree in writing, the public sale may be held in a different county in the State. The public sale shall be held during business hours on a business day.

(c) The public sale of the mortgaged property shall be conducted by the foreclosing mortgagee on the date, at the time, and at the place described in the public notice of the public sale.

**§667-F Public showing of mortgaged property.** (a) If the default is not cured as stated in the notice of default, 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. 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.

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

(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 to be any open houses, the public notice shall so state;
- (3) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
- (4) A description of the mortgaged property, including the address or description of the location of the mortgaged property, and the tax map key number of the mortgaged property;
- (5) The name of the mortgagor and the borrower;
- (6) The name of the foreclosing mortgagee;
- (7) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-C;
- (8) 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) 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 MORTGAGE AGREEMENT MAY BE CURED NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC SALE OF THE MORTGAGED PROPERTY BY PAYING THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE FORECLOSING MORTGAGEE’S ATTORNEY’S FEES AND COSTS, AND ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN THE

FORECLOSING MORTGAGEE AND THE BORROWER. 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, the foreclosing mortgagee shall have a copy of the public notice of the public sale of the mortgaged property:

- (1) Mailed or delivered to the mortgagor and the borrower at their respective last known addresses;
- (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default 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 mortgaged property is located;
- (5) Posted on the mortgaged property or on such other real property of which the mortgaged property is a part; and
- (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5.

(d) The foreclosing mortgagee shall have the public notice of the public sale published in the classified section of a daily newspaper of general circulation in the county where the mortgaged property is located. The public notice shall be published once each week for three consecutive weeks (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.

**§667-H Postponement, cancellation of sale.** (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 by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale.

(b) If there is a postponement of the public sale of the mortgaged property, a new public notice of the public sale shall be published once in the format described in section 667-G. 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. No sooner than fourteen days before the date of the public sale, a copy of the new public notice shall be posted on the mortgaged property or on such other real property of which the mortgaged property is a part, and it shall be mailed or delivered to the mortgagor, to the borrower, and to any other person entitled to receive notice under section 667-G.

(c) The default under the mortgage agreement may be cured no later than three business days before the date of the public sale of the mortgaged property by paying the entire amount which would be owed to the foreclosing mortgagee if the payments under the mortgage agreement had not been accelerated, plus the foreclosing mortgagee’s attorney’s fees and costs, and all other fees and costs incurred by the foreclosing mortgagee related to the default, unless otherwise agreed to between the foreclosing mortgagee and the borrower. 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-I Authorized bidder; successful bidder.** Any person, including the foreclosing mortgagee, shall be authorized to bid for the mortgaged property at the public sale and to purchase the mortgaged property. 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 mortgaged

property is declared by the foreclosing mortgagee 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 foreclosing mortgagee of not less than ten per cent of the highest successful bid price. If the successful bidder is the foreclosing mortgagee or any other mortgagee having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-C, the downpayment requirement may be satisfied by offset and a credit bid up to the amount of the mortgage debt.

**§667-J 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 foreclosing mortgagee first towards the foreclosing mortgagee'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 foreclosing mortgagee. The foreclosing mortgagee, 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-K 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 mortgaged property 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 foreclosing mortgagee in the foreclosing mortgagee's name. The mortgagor or borrower shall sign the conveyance document on his or her own behalf.

(b) From the sale proceeds, after paying all liens and encumbrances in the order of priority as a matter of law, the foreclosing mortgagee's attorney's fees and costs, after paying the fees and costs of the power of sale foreclosure, and after paying the moneys owed to the foreclosing mortgagee, the balance of the sale proceeds shall be distributed by the foreclosing mortgagee to junior creditors having valid liens on the mortgaged property 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 mortgagor.

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

**§667-L Affidavit after public sale; contents.** (a) After the public sale is held, the foreclosing mortgagee 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 mortgage;
- (2) Stating that the power of sale foreclosure was conducted as required by this part;
- (3) Summarizing what was done by the foreclosing mortgagee;
- (4) Attaching a copy of the recorded notice of default; 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 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 , Hawaii Revised Statutes);
- (2) The foreclosing mortgagee is a “foreclosing mortgagee” as defined in the power of sale foreclosure law;
- (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 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 was served on the mortgagor, the borrower, and the following person: . The notice of default was served on the following date and in the following manner: ;
  - (B) The date of the notice of default 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 notice;
  - (C) The notice of default 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 notice is attached as Exhibit “1”;
  - (D) The default was not cured by the deadline date in the notice of default;
  - (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, 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 before the date of the public sale;
  - (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 those dates were at least sixty days before the date of the public sale;
  - (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 public sale;
- (H) Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooperate);
- (I) 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 \$ \_\_\_\_\_ ; and
- (J) 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 where the mortgaged property is located;
- and
- (5)<sup>1</sup> This affidavit is signed under penalty of perjury.”

**§667-M Recordation of affidavit, conveyance document; effect.** (a) The affidavit required under section 667-L and the conveyance document shall be recorded at any time 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-G(c).

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

- (1) The sale of the mortgaged property is considered completed;
- (2) All persons claiming by, through, or under the mortgagor and all other persons having liens on the mortgaged property junior to the lien of the foreclosing mortgagee shall be forever barred of and from any and all right, title, interest, and claims at law or in equity in and to the mortgaged property and every part of the mortgaged property, except as otherwise provided by law;
- (3) The lien of the foreclosing mortgagee and all liens junior in priority to the lien of a foreclosing mortgagee shall be automatically extinguished from the mortgaged property; and
- (4) The purchaser shall be entitled to immediate and exclusive possession of the mortgaged property.

(c) The mortgagor and any person claiming by, through, or under the mortgagor and who is remaining in possession of the mortgaged property 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 mortgaged property 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 attorney's fees and costs and all other reasonable fees and costs, all of which are to be paid for by the non-prevailing party.

**§667-N Foreclosure sale; conclusive presumptions.** Unless an appeal is taken as set forth in section 667-O, any foreclosure sale held in accordance with this part shall be conclusively presumed to have been conducted in a legal, fair, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property based on the circumstances and on the economic conditions at the time of the sale. The statements in the recorded affidavit shall be conclusive evidence as to the facts stated therein for any purpose,

in any court and in any proceeding, and in favor of bona fide purchasers and encumbrancers for value without notice. The purchaser of the mortgaged property shall be conclusively presumed to be a bona fide purchaser. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a mortgage or other security interest in the newly-conveyed property.

**§667-O Appeal to circuit court.** The borrower, the mortgagor, and any creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-C, shall have the right to file an appeal in the circuit court where the mortgaged property is located to contest the presumptions set forth in section 667-N, and the statements contained in the affidavit required by section 667-L. No appeal shall be filed later than thirty days after the recordation of the affidavit. Failure to timely appeal shall result in the statements in the affidavit and the presumptions set forth in section 667-N becoming conclusive in accordance with the terms of that section.

**§667-P Sale of property separately.** If the mortgaged property consists of more than one real property, each property may be sold separately to satisfy the mortgage debt.

**§667-Q 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-C, 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. While that circuit court foreclosure action is pending, the power of sale foreclosure process shall be stayed.

**§667-R Recordation; full satisfaction of debt by borrower.** The recordation of both the conveyance document and the affidavit shall operate as full satisfaction of the debt owed by the borrower to the foreclosing mortgagee even if the foreclosing mortgagee receives nothing from the sale proceeds, unless the debt is secured by other collateral, or except as otherwise provided by law. The debts of other lien creditors are unaffected except as provided in this part.

**§667-S Right to enforce this part.** The foreclosing mortgagee, any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-C, the borrower, and the mortgagor, may enforce this part by bringing an action in the circuit court of the circuit where the mortgaged property is located.

**§667-T Use of power of sale foreclosure in certain non-mortgage situations.** A power of sale foreclosure under this part may be used in certain non-mortgage situations where a law or a written document contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure. These laws or written documents are limited to those involving time share plans, condominium property regimes, and agreements of sale.

**§667-U Public information requirement.** 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, 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.

**§667-V Application of this part.** The requirements of this part shall apply only to new mortgages, loans, agreements, and contracts containing power of sale foreclosure language executed by the borrowers or mortgagors after July 1, 1999.”

SECTION 2. Chapter 667, Hawaii Revised Statutes, is amended by designating sections 667-1 to 667-10 as part I, entitled:

**“FORECLOSURE BY ACTION OR FORECLOSURE BY POWER OF SALE”.**

SECTION 3. Section 501-118, Hawaii Revised Statutes, is amended to read as follows:

**“§501-118 Foreclosure.** Mortgages of registered land may be foreclosed like mortgages of unregistered land.

In case of foreclosure by action, a certified copy of the final judgment of the court confirming the sale may be filed or recorded with the assistant registrar or the deputy after the time for appealing therefrom has expired and the purchaser shall thereupon be entitled to the entry of a new certificate.

In case of foreclosure by exercising the power of sale without a previous judgment, the affidavit required by [section 667-5] chapter 667 shall be [filed or] recorded [and registered] with the assistant registrar. The purchaser or the purchaser's assigns at the foreclosure sale may thereupon at any time present the deed under the power of sale to the assistant registrar for [filing or] recording [and registration,] and obtain a new certificate. Nothing in this chapter shall be construed to prevent the mortgagor or other person in interest from directly impeaching by action or otherwise, any foreclosure proceedings affecting registered land, prior to the entry of a new certificate of title.

After a new certificate of title has been entered, no judgment recovered on the mortgage note for any balance due thereon shall operate to open the foreclosure or affect the title to registered land.”

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

SECTION 5. This Act does not affect rights and duties which matured, penalties which were incurred, and proceedings that were begun before its effective date.

SECTION 6. In codifying the new sections added by section 1, and referred to in section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

## **ACT 122**

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 22, 1998.)

### **Note**

1. Paragraph (5) redesignated.