
A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Act 162, Session Laws of Hawaii 2010, created a
2 mortgage foreclosure task force to undertake a study to develop
3 both general and specific policies and procedures necessary to
4 improve the manner in which mortgage foreclosures are conducted
5 in the State. The Act directed the task force to submit two
6 reports, a preliminary report for the regular session of 2011
7 and a final report for the regular session of 2012. The
8 legislature also finds that in the preliminary report for the
9 regular session of 2011, the task force proposed legislation
10 that amends the existing nonjudicial foreclosure process, which
11 is established as the foreclosure by power of sale process under
12 part I of chapter 667, Hawaii Revised Statutes.

13 The legislature notes that the mortgage foreclosure task
14 force is comprised of individuals representing borrowers,
15 lenders, and other stakeholders in the mortgage foreclosure
16 process. The legislature finds that the recommendations in the
17 preliminary report of the mortgage foreclosure task force for
18 the regular session of 2011 reflect a consensus that was finally



1 reached among this diverse group of individuals over a course of
2 several months of public meetings held during the legislative
3 interim of 2010. The legislature further finds that
4 implementing the task force recommendations will help modernize
5 the present law, by providing increased clarity, certainty,
6 efficiency, and fairness to both borrowers and lenders.

7 The legislature further finds that several other states and
8 municipalities have enacted mandatory foreclosure dispute
9 resolution programs to respond to their own high rates of
10 foreclosure. Many of these programs have been successful in
11 allowing families to stay in their homes or to reach some
12 agreement that mitigates damages in the cases where foreclosure
13 is inevitable. Nevada's foreclosure mediation program is widely
14 seen as one example of such a successful program. Since the
15 start of the Nevada program in September 2009, approximately
16 4,200 mediations have been conducted between homeowners and
17 foreclosing mortgagees. In forty-six per cent of these
18 mediations, homeowners have been able to reach an agreement to
19 remain in the home and in an additional sixteen per cent of
20 cases, homeowners have been able to reach an agreement that
21 mitigates damage and preserves their dignity. The legislature



1 finds that Nevada's foreclosure mediation program serves as a
2 useful model for a similar program in Hawaii.

3 The purpose of this Act is to reform the mortgage
4 foreclosure system by implementing the recommendations of the
5 mortgage foreclosure task force, establishing a mortgage
6 foreclosure dispute resolution program, and implementing
7 additional provisions based on best practices from other
8 jurisdictions and recommendations from professionals working
9 within the foreclosure industry.

10 PART I

11 TASK FORCE RECOMMENDATIONS AND OTHER BEST PRACTICES

12 SECTION 2. Chapter 667, Hawaii Revised Statutes, is
13 amended by adding six new sections to part I to be appropriately
14 designated and to read as follows:

15 "§667-A Definitions. As used in this part, unless the
16 context requires otherwise:

17 "Association" has the same meaning as in sections 514B-3 or
18 421J-2.

19 "Foreclosing mortgagee" has the same meaning as in section
20 667-21(b).

21 "Nonjudicial foreclosure" means foreclosure under power of
22 sale.



1 "Owner-occupant" means a person who, at the time that a
2 notice is served of the intent to foreclose on a residential
3 property under the power of sale, owns an interest which is
4 encumbered by the mortgage being foreclosed in the residential
5 property; provided that the residential property is and has been
6 the person's primary residence for a continuous period of not
7 less than two hundred days immediately preceding the date on
8 which the notice is served.

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

11 §667-B Conversion to judicial foreclosure; residential
12 property; conditions. (a) An owner-occupant of a residential
13 property that is subject to nonjudicial foreclosure under this
14 part may convert the action to a judicial foreclosure provided
15 that:

16 (1) The owner-occupant files a complaint conforming to
17 section 667-C with the circuit court in the circuit
18 where the residential property is located, stating
19 that the owner-occupant of the property elects to
20 convert the nonjudicial foreclosure to a judicial
21 foreclosure proceeding, no later than twenty days
22 after the notice of the nonjudicial foreclosure action



1 is served on the owner-occupant as required by section
2 667-5(a)(1)(A);

3 (2) Within ninety days of the filing of a complaint
4 pursuant to paragraph (1), all owners of an interest
5 in the residential property whose interests are
6 pledged or otherwise encumbered by the mortgage that
7 is being foreclosed and all persons who have signed
8 the promissory note or other instrument evidencing the
9 debt secured by the mortgage that is being foreclosed,
10 including without limitation co-obligors and
11 guarantors, file a statement in the circuit court
12 action agreeing to submit to the judicial process and
13 the jurisdiction of the circuit court; provided
14 further that if this condition is not satisfied, the
15 circuit court action shall be dismissed with prejudice
16 as to the right of any owner-occupant to convert the
17 action to a judicial proceeding, and the mortgagee may
18 proceed nonjudicially;

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



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

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

11 (6) Notwithstanding the authority of the supreme court to
12 establish fees pursuant to section 607-1, the fee for
13 filing a complaint for conversion shall be not more
14 than \$ _____.

15 (b) This section shall not apply to nonjudicial
16 foreclosures of association liens.

17 (c) This section shall not apply to nonjudicial
18 foreclosure for which the mortgagor has elected to pursue
19 alternative dispute resolution pursuant to part _____.

20 §667-C Complaint; residential property; required contents.

21 (a) A complaint for conversion filed pursuant to section 667-B
22 shall contain at a minimum:



- 1 (1) A caption setting forth the name of the court, the
2 title of the action, and the file number; provided
3 that the title of the action shall include the names
4 of the filing party as plaintiff and the foreclosing
5 party as the defendant;
- 6 (2) The name, mailing address, and telephone number of the
7 filing party;
- 8 (3) The address or tax map key number of the property
9 subject to the foreclosure action;
- 10 (4) A statement identifying all other owners of an
11 interest in the residential property whose interests
12 are pledged or otherwise encumbered by the mortgage
13 that is being foreclosed and all persons who have
14 signed the promissory note or other instrument
15 evidencing the debt secured by the mortgage that is
16 being foreclosed, including without limitation co-
17 obligors and guarantors and the property insurer;
- 18 (5) A certification under penalty of perjury that the
19 filing party is an owner-occupant of the subject
20 property and seeks to convert the nonjudicial
21 foreclosure to a judicial proceeding;



1 (6) A statement certifying that the filing party served a
2 copy of the complaint on the attorney identified in
3 the notice of intent to foreclose either by personal
4 delivery at, or by postage prepaid United States mail
5 to, the address of the attorney as set forth in the
6 notice of intent to foreclose; and

7 (7) A copy of the notice of intent to foreclose that was
8 served on the filing party and the property insurer
9 for the power of sale foreclosure that the filing
10 party is seeking to convert to a judicial proceeding.

11 (b) The assignment of parties in the complaint for
12 conversion pursuant to subsection (a) shall relate to the
13 petition for conversion only and shall not be construed to
14 affect the assignment of parties in a nonjudicial power of sale
15 foreclosure converted to a judicial foreclosure pursuant to this
16 part.

17 §667-D Notice of intent to foreclose; residential
18 property; required statement on conversion. (a) The notice of
19 intent to foreclose nonjudicially that is served and posted as
20 required under sections 667-5(a)(1)(A) and 667-5(b)(2) shall
21 include, in addition to the contents required under section



1 667-7, a statement printed in not less than 14-point font as
2 follows:

3 "IF THE PROPERTY BEING FORECLOSED IS
4 IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN
5 OWNER-OCCUPANT OF THE PROPERTY (DEFINED UNDER
6 PART I OF CHAPTER 667 OF THE HAWAII REVISED
7 STATUTES, AS A PERSON WHO, AT THE TIME THIS
8 NOTICE IS SERVED, OWNS AN INTEREST IN THE
9 RESIDENTIAL PROPERTY THAT IS SUBJECT TO THE
10 MORTGAGE BEING FORECLOSED AND THE RESIDENTIAL
11 PROPERTY HAS BEEN THE PRIMARY RESIDENCE
12 CONTINUOUSLY FOR NOT LESS THAN TWO HUNDRED DAYS)
13 HAS THE RIGHT TO CONVERT A NONJUDICIAL
14 FORECLOSURE PROCEEDING TO A JUDICIAL FORECLOSURE
15 WHERE CLAIMS AND DEFENSES MAY BE CONSIDERED BY A
16 COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-
17 OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED
18 FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE
19 THE PROPERTY IS LOCATED WITHIN TWENTY DAYS AFTER
20 SERVICE OF THIS NOTICE.

21 IN ADDITION, ALL OWNERS OF AN INTEREST IN
22 THE RESIDENTIAL PROPERTY WHOSE INTERESTS HAVE



1 BEEN PLEDGED OR OTHERWISE ENCUMBERED BY THE
2 MORTGAGE THAT IS BEING FORECLOSED AND ALL PERSONS
3 WHO HAVE SIGNED THE PROMISSORY NOTE OR OTHER
4 INSTRUMENT EVIDENCING THE DEBT SECURED BY THE
5 MORTGAGE THAT IS BEING FORECLOSED, INCLUDING,
6 WITHOUT LIMITATION, CO-OBLIGORS AND GUARANTORS,
7 SHALL FILE A STATEMENT WITHIN NINETY DAYS OF THE
8 FILING OF THE ATTACHED FORM IN THE CIRCUIT COURT
9 ACTION THAT THEY AGREE TO SUBMIT TO THE JUDICIAL
10 PROCESS AND THE JURISDICTION OF THE CIRCUIT
11 COURT. FAILURE TO SATISFY THIS CONDITION WILL
12 RESULT IN DISMISSAL OF THE CIRCUIT COURT ACTION.

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

16 A FORECLOSING LENDER WHO COMPLETES A
17 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY
18 SHALL BE PROHIBITED UNDER HAWAII LAW FROM
19 PURSUING A DEFICIENCY JUDGMENT AGAINST AN OWNER-
20 OCCUPANT WHO DOES NOT OWN A FEE SIMPLE OR
21 LEASEHOLD INTEREST IN ANY OTHER REAL PROPERTY.
22 IF THIS ACTION IS CONVERTED TO A JUDICIAL



1 PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE
2 TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT
3 TO SEEK A DEFICIENCY JUDGMENT.

4 ALTERNATIVE DISPUTE RESOLUTION FOR THE
5 PURPOSE OF ATTEMPTING TO AVOID FORECLOSURE OR OF
6 MITIGATING THE EFFECTS OF FORECLOSURE ON A
7 HOMEOWNER IS AVAILABLE IN NONJUDICIAL FORECLOSURE
8 ACTIONS. HOWEVER, ALTERNATIVE DISPUTE RESOLUTION
9 MAY NOT BE AVAILABLE IN JUDICIAL FORECLOSURE
10 ACTIONS. IF THIS ACTION IS CONVERTED TO A
11 JUDICIAL PROCEEDING, YOU MIGHT NOT HAVE THE RIGHT
12 TO PURSUE ALTERNATIVE DISPUTE RESOLUTION TO
13 ATTEMPT TO AVOID FORECLOSURE OR TO MITIGATE THE
14 DAMAGES OF FORECLOSURE UNLESS A JUDGE ORDERS
15 OTHERWISE."

16 (b) The statement required by this section shall not be
17 required to be included in the notice of sale published pursuant
18 to section 667-5(a)(1)(B). Nothing in this section shall be
19 construed to set a minimum font size for the published notice of
20 sale. The rights referred to in this notice do not apply in the
21 case of the foreclosure of a lien by an association.



1 §667-E Recordation of notice of intent to foreclose. The
2 foreclosing mortgagee may record a copy of the notice of intent
3 to foreclose with the assistant registrar of the land court or
4 the bureau of conveyances, as the case may be, in a manner
5 similar to recordation of notices of pendency of action under
6 section 501-151 or section 634-51, or both, as applicable. The
7 recorded notice shall have the same effect as a notice of pendency
8 of action. From and after the recordation of the notice, any
9 person who becomes a purchaser or encumbrancer of the mortgaged
10 property shall be deemed to have constructive notice of the power
11 of sale foreclosure and shall be bound by the foreclosure.

12 §667-F Location of public sale following nonjudicial power
13 of sale foreclosure. The public sale of the mortgaged property
14 following foreclosure shall be held only on grounds or at
15 facilities under the administration of the State as follows:

16 (1) At a state building designated by the department of
17 accounting and general services, for a public sale of
18 mortgaged property located in the city and county of
19 Honolulu; provided that the department of accounting
20 and general services shall provide notification to the
21 judiciary and the general public of the designated
22 state building;



1 (2) At a state facility or on public land in Hilo, for a
2 public sale of mortgaged property located in the
3 eastern portion of the county of Hawaii;

4 (3) At a state facility or on public land in Kona, for a
5 public sale of mortgaged property located in the
6 western portion of the county of Hawaii;

7 (4) At a state facility or on public land on Maui, for a
8 public sale of mortgaged property located in the
9 county of Maui; and

10 (5) At a state facility or on public land on Kauai, for a
11 public sale of mortgaged property located in the
12 county of Kauai;

13 provided that no public sale shall be held on the grounds or at
14 facilities under the administration of the judiciary."

15 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
16 amended by adding three new sections to part III to be
17 appropriately designated and to read as follows:

18 "§667-G Prohibited conduct; unfair or deceptive act or
19 practice. It shall be a prohibited practice for any foreclosing
20 mortgagee to engage in any of the following practices:



- 1 (1) Holding a public sale on a date, at a time, or at a
2 place other than that described in the public notice
3 of the public sale;
- 4 (2) Specifying a fictitious place in the public notice of
5 the public sale;
- 6 (3) Conducting a postponed public sale on a date other
7 than the date described in the new public notice of
8 the public sale;
- 9 (4) Delaying the conveyance of the conveyance document
10 deed to a bona fide purchaser who purchases in good
11 faith for more than forty-five days after the
12 completion of the public sale;
- 13 (5) Completing nonjudicial foreclosure proceedings during
14 short sale escrows for bid prices that are less than a
15 purchaser's offer to purchase;
- 16 (6) Completing nonjudicial foreclosure proceedings during
17 loan modification negotiations with the mortgagor; or
- 18 (7) Completing nonjudicial foreclosure proceedings against
19 a mortgagor who has been accepted or is being
20 evaluated for consideration into a federal loan
21 modification program before obtaining a certificate or
22 other documentation confirming that the mortgagor is



1 no longer eligible or an active participant of that
2 federal program.

3 §667-H Suspension of foreclosure actions by junior
4 lienholders. Upon initiation of a foreclosure action pursuant
5 to this chapter by a foreclosing mortgagee as defined in section
6 667-21(b), no junior lienholder shall be permitted to initiate
7 or continue a foreclosure until the foreclosure initiated by the
8 foreclosing mortgagee has been concluded by either a judgment
9 issued by a court pursuant to section 667-1, the recording of an
10 affidavit after public sale pursuant to section 667-5 or 667-33,
11 or the filing of a resolution document under the dispute
12 resolution provisions of section 667-P; provided that a junior
13 lienholder shall be permitted to initiate or continue with a
14 foreclosure if permitted by the resolution document.

15 §667-I Unfair or deceptive act or practice. Any
16 foreclosing mortgagee who violates this chapter shall be guilty
17 of an unfair or deceptive act or practice under section 480-2."

18 SECTION 4. Section 501-151, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§501-151 Pending actions, judgments; recording of,
21 notice. No writ of entry, action for partition, or any action
22 affecting the title to real property or the use and occupation



1 thereof or the buildings thereon, and no judgment, nor any
2 appeal or other proceeding to vacate or reverse any judgment,
3 shall have any effect upon registered land as against persons
4 other than the parties thereto, unless a full memorandum
5 thereof, containing also a reference to the number of
6 certificate of title of the land affected is filed or recorded
7 and registered. Except as otherwise provided, every judgment
8 shall contain or have endorsed on it the State of Hawaii general
9 excise taxpayer identification number, the federal employer
10 identification number, or the last four digits only of the
11 social security number for persons, corporations, partnerships,
12 or other entities against whom the judgment is rendered. If the
13 judgment debtor has no social security number, State of Hawaii
14 general excise taxpayer identification number, or federal
15 employer identification number, or if that information is not in
16 the possession of the party seeking registration of the
17 judgment, the judgment shall be accompanied by a certificate
18 that provides that the information does not exist or is not in
19 the possession of the party seeking registration of the
20 judgment. Failure to disclose or disclosure of an incorrect
21 social security number, State of Hawaii general excise taxpayer
22 identification number, or federal employer identification number



1 shall not in any way adversely affect or impair the lien created
2 upon recording of the judgment. This section does not apply to
3 attachments, levies of execution, or to proceedings for the
4 probate of wills, or for administration in a probate court;
5 provided that in case notice of the pendency of the action has
6 been duly registered it is sufficient to register the judgment
7 in the action within sixty days after the rendition thereof.

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

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

13 Notice of intent to foreclose as provided in section 667-E
14 may be recorded.

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

19 SECTION 5. Section 607-5, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) The fees prescribed by the schedule in this section
22 shall be paid to the clerk of the circuit court as costs of



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

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

17 **SCHEDULE**

18 In the application of this schedule, each case assigned a
19 new number or filed under the number previously assigned to a
20 probate, trust, guardianship, or conservatorship, shall carry a
21 fee for the institution or transfer of the action or proceeding



1 as prescribed by part I, and in addition the fees prescribed by
2 part II unless otherwise provided."

3 SECTION 6. Section 667-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§667-3 Proceeds, how applied. Mortgage and other
6 creditors shall be entitled to payment according to the priority
7 of their liens, and not pro rata; and judgments of foreclosure
8 and foreclosures under power of sale that are conducted in
9 compliance with this part and for which an affidavit is recorded
10 as required under section 667-5 shall operate to extinguish the
11 liens of subsequent mortgages and liens of the same property,
12 without forcing prior mortgagees or lienors to their right of
13 recovery. The surplus after payment of the mortgage foreclosed,
14 shall be applied pro tanto to the next junior mortgage[7] or
15 lien, and so on to the payment, wholly or in part, of mortgages
16 and liens junior to the one assessed."

17 SECTION 7. Section 667-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§667-5 Foreclosure under power of sale; notice; affidavit
20 after sale[-]; deficiency judgments. (a) When a power of sale
21 is contained in a mortgage, and where the mortgagee, the
22 mortgagee's successor in interest, or any person authorized by



1 the power to act in the premises, desires to foreclose under
2 power of sale upon breach of a condition of the mortgage, the
3 mortgagee, successor, or person shall be represented by an
4 attorney who is licensed to practice law in the State and is
5 physically located in the State. The attorney shall:

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

9 (A) By serving, not less than twenty-one days before
10 the date of sale, written notice of the intent to
11 foreclose on all persons entitled to notice under
12 this part in the same manner as service of a
13 civil complaint under chapter 634 and the Hawaii
14 rules of civil procedure; provided that in the
15 case of nonjudicial foreclosure of a lien by an
16 association, the association shall mail the
17 notice by certified or registered mail, not less
18 than twenty-one days before the date of sale, to:

19 (i) The unit owner at the address shown in the
20 records of the association and, if
21 different, at the address of the unit being
22 foreclosed; and



1 (ii) All mortgage creditors whose names are known
2 or can be discovered by the association; and

3 (B) By publication of the notice once in each of
4 three successive weeks ~~[+]~~, constituting three
5 publications ~~[+]~~ with the last publication to be
6 not less than fourteen days before the day of

7 sale, in a newspaper having a general circulation

8 in the county in which the mortgaged property

9 lies; ~~[and]~~

10 (2) Give notice of the mortgagor's right to elect to
11 participate in dispute resolution as required by
12 section 667-L or to convert the nonjudicial power of
13 sale foreclosure to a judicial foreclosure pursuant to
14 section 667-B; and

15 ~~[-2-]~~ (3) Give any notices and do all acts as ~~[are]~~
16 authorized or required by the power contained in the
17 mortgage.

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

- 20 (1) Filed with the state director of taxation; and
- 21 (2) Posted on the premises not less than twenty-one days
- 22 before the day of sale.



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

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

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

14 (d) Any sale, of which notice has been given [as
15 ~~aforesaid,~~] pursuant to subsections (a) and (b) may be postponed
16 from time to time by public announcement made by the mortgagee
17 or by [~~some~~] a person acting on the mortgagee's behalf. Upon
18 request made by any person who is entitled to notice pursuant to
19 section 667-5.5 or 667-6, or this section, the mortgagee or
20 person acting on the mortgagee's behalf shall provide the date
21 and time of a postponed auction, or if the auction is canceled,
22 information that the auction was canceled. The mortgagee,



1 within thirty days after selling the property in pursuance of
2 the power, shall file a copy of the notice of sale and the
3 mortgagee's affidavit, setting forth the mortgagee's acts in the
4 premises fully and particularly, in the bureau of conveyances.

5 (e) The mortgagee or other person, excluding an
6 association, who completes the nonjudicial foreclosure of a
7 mortgage or other lien on residential property pursuant to this
8 part shall not be entitled to pursue or obtain a deficiency
9 judgment against an owner-occupant of the residential property
10 who, at the time the notice of intent to foreclose is served,
11 does not have a fee simple or leasehold ownership interest in any
12 other real property; provided that nothing in this section shall
13 prohibit any other mortgagee or person who holds a lien on the
14 residential property subject to the nonjudicial foreclosure, whose
15 lien is subordinate to the mortgage being foreclosed and is
16 extinguished by the nonjudicial foreclosure sale, from pursuing a
17 monetary judgment against an owner-occupant.

18 [-(e)—The] (f) Subject to the requirements of part , the
19 affidavit and copy of the notice shall be recorded and indexed
20 by the registrar, in the manner provided in chapter 501 or 502,
21 as the case may be.



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

3 SECTION 8. Section 667-5.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§667-5.5 Foreclosure notice.** Notwithstanding any law or
6 agreement to the contrary, any person who forecloses on a
7 property under this part within a planned community, a
8 condominium apartment or unit, or an apartment in a cooperative
9 housing project shall notify, by ~~[way of]~~ registered or
10 certified mail, the board of directors of the planned community
11 association, the association of owners of the condominium
12 project, or the cooperative housing project in which the
13 property to be foreclosed is located~~[7]~~ of the foreclosure at
14 the time foreclosure proceedings are begun. The notice, at a
15 minimum, shall identify the property, condominium apartment or
16 unit, or cooperative apartment ~~[which]~~ that is the subject of
17 the foreclosure and ~~[identify]~~ the name ~~[or names]~~ of the
18 ~~[person or]~~ persons bringing foreclosure proceedings. This
19 section shall not apply ~~[when]~~ if the planned community
20 association, condominium association of owners, or cooperative
21 housing corporation is a party in a foreclosure action. This
22 section shall not affect civil proceedings against parties other



1 than the planned community association, association of owners,
2 or cooperative housing corporation."

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

5 "§667-8 Affidavit as evidence, when. If it appears by the
6 affidavit that the affiant has in all respects complied with the
7 requirements of the power of sale and the [~~statute,~~] relevant
8 statutes in relation to all things to be done by the affiant
9 before selling the property, and the affiant has sold the [~~same~~]
10 property in the manner required by the power, the affidavit [~~]~~
11 or a duly certified copy of the record [~~thereof,~~] of the
12 affidavit shall be admitted as evidence that the power of sale
13 was duly executed. The interests of the mortgagor, and all
14 those claiming under, by, or through the mortgagor, in the
15 property being foreclosed by exercise of a power of sale under
16 this part, including land whose title is not registered in the
17 land court under chapter 501, shall be deemed extinguished upon
18 the recordation of the affidavit in the bureau of conveyances or
19 in the office of the assistant registrar of the land court, as
20 the case may be, within thirty days of the date of sale of the
21 property at public auction."



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

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

13 SECTION 11. The judiciary shall adopt a form for the
14 complaint for conversion of a nonjudicial foreclosure to a
15 judicial foreclosure pursuant to section 667-B.

16 PART II

17 MORTGAGE SERVICERS

18 SECTION 12. Chapter 454M, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§454M- Unlicensed foreclosure actions voided. Any
22 action taken in connection with a mortgage foreclosure under



1 chapter 667 by a nonexempt person who engages in the business of
2 mortgage servicing without a license as provided and required by
3 this chapter shall be void for purposes of chapter 667."

4 SECTION 13. Chapter 667, Hawaii Revised Statutes, is
5 amended by adding a new section to part III to be appropriately
6 designated and to read as follows:

7 "§667-J Invalid notice. (a) Any notices given pursuant
8 to this chapter shall be valid only if issued in compliance with
9 this section and by persons authorized to do so by a foreclosing
10 mortgagee or lender pursuant to an affiliate statement signed by
11 the foreclosing mortgagee or lender and recorded at the bureau
12 of conveyances identifying the agency or affiliate relationship
13 and the authority granted or conferred to the person.

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

18 (c) A mortgage servicer or an agent, employee, or
19 representative of a mortgage servicer that provides any notice
20 required by this chapter on behalf of a mortgagee or lender
21 shall be listed in the affiliate statement filed by the
22 foreclosing mortgagee or lender pursuant to subsection (a); and



1 shall be licensed or exempt from licensing under chapter 454M.
 2 The agency relationship or affiliation of the mortgage servicer
 3 and the foreclosing mortgagee or lender and any authority
 4 granted or conferred to that mortgage servicer shall be
 5 described in the affiliate statement filed under both subsection
 6 (a) and section 454M-5(a)(4)(F)."

7 SECTION 14. Section 454M-2, Hawaii Revised Statutes, is
 8 amended by amending subsection (b) to read as follows:

9 "(b) [A] No person [is engaged] shall engage in the
 10 business of mortgage servicing [~~if the person provides these~~
 11 ~~services~~] in this State [~~even if~~] unless the person providing
 12 services has [~~no~~] a physical presence in the State [~~-~~] pursuant
 13 to section 454M-5(a)(5)."

14 SECTION 15. Section 454M-5, Hawaii Revised Statutes, is
 15 amended by amending subsection (a) to read as follows:

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

- 18 (1) Safeguard and account for any money handled for the
 19 borrower;
- 20 (2) Act with reasonable skill, care, timeliness,
 21 promptness, and diligence;



1 (3) Disclose to the commissioner in [the] its application
2 and yearly renewal a complete, current schedule of the
3 ranges of costs and fees it charges borrowers for its
4 servicing-related activities; [and]

5 (4) File with [~~the commissioner upon request~~] its yearly
6 renewal statement a report in a form and format
7 acceptable to the director detailing the servicer's
8 activities in this State, including:

9 (A) The number of mortgage loans the servicer is
10 servicing;

11 (B) The type and characteristics of [~~such~~] loans
12 serviced in this State;

13 (C) The number of serviced loans in default, along
14 with a breakdown of thirty-, sixty-, and ninety-
15 day delinquencies;

16 (D) Information on loss mitigation activities,
17 including details on workout arrangements
18 undertaken;

19 (E) Information on foreclosures commenced in this
20 State; [and]

21 (F) The affiliations of the mortgage servicer,
22 including any lenders or mortgagees for which the



1 mortgage servicer provides service, any
2 subsidiary or parent entities of the mortgage
3 servicer, and a description of the authority held
4 by the mortgage servicer through its
5 affiliations; and

6 ~~[-F-]~~ (G) Any other information that the commissioner
7 may require ~~[-]~~; and

8 (5) Maintain an office in the State that is staffed by at
9 least one agent or employee for the purposes of
10 addressing consumer inquiries or complaints and
11 accepting service of process; provided that the
12 mortgage servicer's business constitutes at least a
13 twenty percent share of the total mortgage loan
14 service market in the State within the previous
15 calendar year."

16 SECTION 16. Section 454M-10, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~[-]~~ §454M-10 ~~[-]~~ Penalty. Any person who violates any
19 provision of this chapter may be subject to an administrative
20 fine of not more than ~~[\$5,000]~~ \$7,000 for each violation."

21 SECTION 17. Section 667-32, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[f]§667-32[+] Affidavit after public sale; contents. (a)

2 After the public sale [~~s~~] has been held, the foreclosing
3 mortgagee shall sign an affidavit under penalty of perjury:

4 (1) Stating that the power of sale foreclosure was made
5 pursuant to the power of sale provision in the
6 mortgage;

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

9 (3) Summarizing what was done by the foreclosing
10 mortgagee;

11 (4) Attaching a copy of the recorded notice of default [~~r~~]
12 and intention to foreclose;

13 (5) Attaching a copy of the last public notice of the
14 public sale [~~r~~];

15 (6) Attaching a copy of the affiliate statement filed at
16 the bureau of conveyances as required by section 667-
17 J; and

18 (7) Attaching a copy of the statement filed with the
19 commissioner of financial institutions of the mortgage
20 servicer affiliations as required under section 454M-
21 5(a)(4)(F), describing the authority held by the
22 mortgage servicer through its affiliations.



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

4 "(1) I am duly authorized to represent or act on behalf of
5 _____ (name of mortgagee) ("foreclosing
6 mortgagee") regarding the following power of sale
7 foreclosure. I am signing this affidavit in
8 accordance with the alternate power of sale
9 foreclosure law (Chapter 667, Part II, Hawaii Revised
10 Statutes);

11 (2) The foreclosing mortgagee is a "foreclosing mortgagee"
12 as defined in the power of sale foreclosure law;

13 (3) The power of sale foreclosure is of a mortgage made by
14 _____ (name of mortgagor)
15 ("mortgagor"), dated _____, and recorded in the
16 _____ (bureau of conveyances or office of
17 the assistant registrar of the land court) as
18 _____ (recordation information). The
19 mortgaged property is located at:

20 _____ (address or description of
21 location) and is identified by tax map key number:
22 _____ . The legal description of the mortgaged



1 property is attached as Exhibit "A". The name of the
2 borrower, if different from the mortgagor, is
3 _____ ("borrower");

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

8 (A) A notice of default and intention to foreclose
9 was served on the mortgagor, the borrower, and
10 the following person: _____. The
11 notice of default and intention to foreclose was
12 served on the following date and in the following
13 manner: _____;

14 (B) The date of the notice of default and intention
15 to foreclose was _____ (date). The deadline
16 in the notice for curing the default was
17 _____ (date), which [~~deadline date~~] was at
18 least sixty days after the date of the notice;

19 (C) The notice of default and intention to foreclose
20 was recorded before the deadline date in the
21 _____ (bureau of conveyances or office
22 of the assistant registrar of the land court).



1 The notice was recorded on _____ (date) as
2 document no. _____. A copy of the recorded
3 notice is attached as Exhibit "1";

4 (D) The default was not cured by the deadline date in
5 the notice of default [7] and intention to
6 foreclose;

7 (E) A public notice of the public sale was initially
8 published in the classified section of the
9 _____, a daily newspaper [ef] with
10 the largest general circulation expressly in the
11 county where the mortgaged property is located,
12 once each week for three consecutive weeks on the
13 following dates: _____. A copy of the
14 affidavit of publication for the last public
15 notice of the public sale is attached as Exhibit
16 "2". The date of the public sale was _____
17 (date). The last publication was not less than
18 fourteen days before the date of the public sale;

19 (F) The public notice of the public sale was sent to
20 the mortgagor, to the borrower, to the state
21 director of taxation, to the director of finance
22 of the county where the mortgaged property is



1 located, and to the following:
 2 _____ . The public notice was sent on
 3 the following dates and in the following manner:
 4 _____ . Those dates were after the
 5 deadline date in the notice of default[r] and
 6 intention to foreclose, and those dates were at
 7 least sixty days before the date of the public
 8 sale;

9 (G) The public notice of the public sale was posted
 10 on the mortgaged property or on [~~such~~ other]
 11 another real property of which the mortgaged
 12 property is a part on _____ (date). That
 13 date was at least sixty days before the date of
 14 the public sale;

15 (H) Two public showings (open houses) of the
 16 mortgaged property were held (or were not held
 17 because the mortgagor did not cooperate);

18 (I) A public sale of the mortgaged property was held
 19 on a business day during business hours on:
 20 _____ (date), at _____ (time), at the
 21 following location: _____. The
 22 highest successful bidder was _____



1 _____ (name) with the highest
2 successful bid price of \$ _____; and

3 (J) At the time the public sale was held, the default
4 was not cured and there was no circuit court
5 foreclosure action pending in the circuit where
6 the mortgaged property is located; and

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

8 SECTION 18. Section 667-39, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[-]~~ §667-39 ~~[+]~~ Right to enforce this part. (a) The
11 foreclosing mortgagee, any other creditor ~~[having]~~ with a
12 recorded lien on the mortgaged property before the recordation
13 of the notice of default and intention to foreclose under
14 section 667-23, the borrower, and the mortgagor, may enforce
15 this part by bringing an action in the circuit court of the
16 circuit where the mortgaged property is located.

17 (b) The remedies provided in this part are cumulative and
18 shall not abridge the right of a party to bring action under any
19 other law, including section 454M-9."

20 PART III

21 DISPUTE RESOLUTION



1 SECTION 19. Chapter 667, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . MANDATORY FORECLOSURE DISPUTE RESOLUTION

5 §667-K Definitions. As used in this part:

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

8 "Dispute resolution" means a facilitated negotiation
9 between a mortgagor and mortgagee for the purpose of reaching an
10 agreement for mortgage loan modification or other agreement in
11 an attempt to avoid foreclosure or to mitigate damages in the
12 event that foreclosure is unavoidable.

13 "Facilitator" means the person assigned to facilitate the
14 dispute resolution process required by this part.

15 §667-L Dispute resolution required before foreclosure.

16 (a) Before a circuit court may order a judgment of foreclosure
17 pursuant to section 667-1 or before a public sale may be
18 conducted pursuant to section 667-5 or 667-25 for a residential
19 property that is occupied by the mortgagor as a primary
20 residence, the foreclosing mortgagee shall, at the election of
21 the mortgagor, participate in dispute resolution pursuant to
22 this part to attempt to reach a negotiated agreement to avoid



1 foreclosure or to mitigate damages where foreclosure is
2 unavoidable.

3 (b) Dispute resolution required by this part shall be
4 conducted through the center for alternative dispute resolution
5 established by section 613-2.

6 **§667-M Notice of dispute resolution required.** (a) Notice
7 of a foreclosure action in circuit court pursuant to section
8 667-1, notice of a power of sale foreclosure filed or posted
9 pursuant to section 667-5(b), or notice of default and intention
10 to foreclose served pursuant to section 667-22(e) shall include
11 notice that the foreclosing mortgagee is required, at the
12 election of the mortgagor, to participate in dispute resolution
13 pursuant to this part for the purpose of attempting to avoid
14 foreclosure.

15 (b) The notice required by subsection (a) shall include:

16 (1) The name and contact information of a person or entity
17 with the authority to negotiate a loan modification on
18 behalf of the mortgagee;

19 (2) Contact information for at least one local housing
20 counseling agency approved by the United States

21 Department of Housing and Urban Development;



1 (3) A form for the mortgagor to use to elect or to waive
2 dispute resolution pursuant to this part which shall
3 contain the mailing address of the center for
4 alternative dispute resolution and instructions for
5 the return of the form to the center for alternative
6 dispute resolution; and

7 (4) A description of the information that the mortgagor is
8 required to provide to the center for alternative
9 dispute resolution.

10 **§667-N Election of dispute resolution; stay of foreclosure**
11 **proceedings.** (a) No later than thirty days after receipt of
12 notice of dispute resolution under section 667-M, a mortgagor
13 shall contact the center for alternative dispute resolution to
14 indicate whether or not the mortgagor elects to pursue dispute
15 resolution pursuant to this part.

16 (b) Upon receipt of notice that a mortgagor has elected to
17 pursue dispute resolution, the center for alternative dispute
18 resolution shall process the notice, assign the matter to a
19 facilitator, and schedule the dispute resolution no later than
20 one hundred thirty-five days after receipt of the mortgagor's
21 election to pursue dispute resolution according to rules adopted
22 by the supreme court. All foreclosure proceedings shall be



1 stayed effective upon the center for alternative dispute
2 resolution's receipt of notice of election to pursue dispute
3 resolution pending the outcome of the dispute resolution
4 process.

5 (c) If a mortgagor elects to waive dispute resolution or
6 fails to give notice within the time specified to the center for
7 alternative dispute resolution of the mortgagor's election to
8 pursue dispute resolution, the center for alternative dispute
9 resolution shall notify the court, the bureau of conveyances, or
10 the land court, as appropriate, and the foreclosure process
11 shall proceed pursuant to statute.

12 (d) Election of dispute resolution pursuant to this part
13 shall constitute a waiver of the right to convert the
14 foreclosure proceeding to a judicial foreclosure action pursuant
15 to section 667-B.

16 **§667-0 Dispute resolution process; requirements.** (a)
17 Parties to a dispute resolution process conducted pursuant to
18 this part shall consist of the mortgagor or the mortgagor's
19 representative and the mortgagee or the mortgagee's
20 representative; provided that any representative of the
21 mortgagee who participates in the dispute resolution shall be
22 authorized to negotiate a loan modification on behalf of the



1 mortgagee or shall have direct access by telephone or other
2 immediately available communications medium at all times during
3 the dispute resolution process to a person who is so authorized.

4 All parties may be represented by counsel in the dispute
5 resolution process; provided that the mortgagor may be
6 represented by a housing counselor who is certified by the
7 United States Department of Housing and Urban Development.

8 (b) Prior to a dispute resolution process scheduled
9 pursuant to this part, the mortgagor and the mortgagee shall
10 provide the center for alternative dispute resolution with any
11 information that the center may request. Information required
12 by this subsection shall include financial and employment
13 information to be provided by the mortgagor and loan
14 information, including the original or a certified copy of the
15 mortgage instrument and promissory note, provided by the
16 mortgagee.

17 (c) A dispute resolution pursuant to this part shall take
18 place at a community mediation center or other site specified by
19 the center for alternative dispute resolution and shall consist
20 of one four-hour meeting of the parties and the facilitator
21 during which the parties shall present the dispute and attempt
22 to conclude the dispute resolution process. The facilitator may



1 extend the time allowed for the dispute resolution at the
2 facilitator's discretion. A dispute resolution conducted
3 pursuant to this part shall use the calculations, assumptions,
4 and forms established by the Federal Deposit Insurance
5 Corporation and published in the Federal Deposit Insurance
6 Corporation Loan Modification Program Guide as available on the
7 Federal Deposit Insurance Corporation's publicly accessible
8 website.

9 (d) If the mortgagee fails to attend the dispute
10 resolution, fails to comply with the requirements of this part
11 or the rules of the supreme court adopted pursuant to this part,
12 or participates through a representative that does not meet the
13 requirements of subsection (a), the facilitator shall notify the
14 court, the bureau of conveyances, or the land court, as
15 appropriate. After receipt of notice pursuant to this
16 subsection, the court shall not issue a judgment of foreclosure
17 and neither the land court nor the bureau of conveyances shall
18 record an affidavit, a notice of sale, or a conveyance document
19 for the subject property; provided that in the case of a
20 judicial foreclosure, the court may order a loan modification
21 according to terms determined proper by the court.



1 (e) If the mortgagor fails to attend the dispute
2 resolution or fails to comply with the requirements of this part
3 or the rules of the supreme court adopted pursuant to this part
4 the facilitator shall notify the court, the bureau of
5 conveyances, or the land court, as appropriate, that the
6 requirements of this part have been met and the foreclosure
7 process shall proceed pursuant to statute.

8 (f) If, despite both parties' participation in the dispute
9 resolution process and compliance with the requirements of this
10 part and the rules of the supreme court adopted pursuant to this
11 part, the parties are not able to come to an agreement, the
12 facilitator shall notify the court, the bureau of conveyances,
13 or the land court, as appropriate, that the requirements of this
14 part have been met. Upon receipt of notice pursuant to this
15 subsection, the foreclosure process shall proceed pursuant to
16 statute.

17 (g) If the parties to a dispute resolution come to an
18 agreement to resolve the matters at issue in the dispute
19 resolution before the dispute resolution scheduled pursuant to
20 this section, the parties shall notify the facilitator of the
21 resolution no later than two business days before the scheduled
22 dispute resolution. No fees shall be refunded if the parties



1 come to an agreement prior to or outside of a dispute resolution
2 conducted pursuant to this part.

3 §667-P Outcome of dispute resolution. (a) When the
4 parties to dispute resolution have complied with the
5 requirements of this part and the rules of the supreme court
6 adopted pursuant to this part and have reached an agreement, the
7 agreement shall be memorialized in a resolution document which
8 shall be filed with the circuit court, the land court, or the
9 bureau of conveyances, as appropriate. The resolution document
10 shall be a contract between the parties and shall be enforceable
11 in a private contract action in a court of appropriate
12 jurisdiction in the event of breach by either party. If the
13 resolution document allows for foreclosure or other transfer of
14 the subject property, the court shall order foreclosure and the
15 land court or bureau of conveyances shall record an affidavit, a
16 notice of sale, or a conveyance document upon presentation by
17 the mortgagee, as appropriate.

18 (b) The parties to a dispute resolution may enter into a
19 temporary modification agreement as an outcome of a dispute
20 resolution conducted pursuant to this part; provided that any
21 temporary modification agreements shall include an expiration
22 date, which shall be a date certain upon which the parties shall



1 have complied with their respective obligations under the
2 agreement. A temporary modification agreement shall be a
3 private contract memorialized, filed, and enforceable according
4 to subsection (a).

5 **§667-Q Confidentiality.** Personal financial information
6 and other sensitive personal information disclosed in the course
7 of foreclosure dispute resolution pursuant to this part shall be
8 confidential and not subject to public disclosure.

9 **§667-R Facilitator qualifications.** The supreme court
10 shall adopt rules for qualifications and training of
11 facilitators for foreclosure dispute resolution pursuant to this
12 part; provided that facilitators shall possess sufficient
13 knowledge in the areas of law, real estate, or finance and shall
14 receive sufficient training to be able to effectuate the
15 purposes of this part.

16 **§667-S Fee.** The center for alternative dispute resolution
17 may charge a fee not to exceed \$400 for dispute resolution
18 services provided pursuant to this part. Any fee for dispute
19 resolution services shall be divided equally between the
20 mortgagee and the mortgagor. All fees collected pursuant to
21 this section shall be deposited into the foreclosure dispute
22 resolution special fund established by section 667-V.



1 **§667-T Applicability.** This part shall apply to
2 foreclosures, whether by action or by power of sale, of
3 residential real property that is occupied by the mortgagor as a
4 primary residence; provided that this part shall not apply to
5 actions by an association to foreclose on a lien for amounts
6 owed to the association.

7 **§667-U Rules.** The chief justice of the supreme court may
8 adopt rules for the administration of this part including rules
9 to:

- 10 (1) Ensure that dispute resolution occurs in an orderly
11 and timely manner;
- 12 (2) Require each party to provide any information that the
13 facilitator deems necessary;
- 14 (3) Protect the dispute resolution process from abuse and
15 ensure that each party complies with this part and the
16 rules adopted by the supreme court pursuant to this
17 part;
- 18 (4) Establish qualifications and training requirements for
19 facilitators; and
- 20 (5) Protect personal financial information and other
21 sensitive personal information obtained in the course
22 of foreclosure dispute resolution from disclosure.



1 §667-V Foreclosure dispute resolution special fund. (a)

2 There is established outside of the state treasury a special
3 fund to be known as the foreclosure dispute resolution special
4 fund to be administered by the judiciary to implement the
5 mandatory dispute resolution in foreclosure proceedings required
6 by this part. The fund shall consist of contributions from the
7 sources identified in subsections (c) and (d). Interest earned
8 from the balance of the fund shall become a part of the fund.
9 The judiciary shall adopt rules regarding the distribution of
10 moneys from the fund.

11 (b) The judiciary may allow expenditure of moneys from the
12 fund directly by the center for alternative dispute resolution.

13 (c) All persons who bring an action in the circuit court
14 for foreclosure pursuant to section 667-1, who record an
15 affidavit in the land court pursuant to section 501-118, or who
16 record an affidavit, a notice of sale, or a conveyance document
17 in the bureau of conveyances pursuant to section 667-5 or 667-
18 33, shall pay a fee of \$ for deposit into the
19 foreclosure dispute resolution special fund. The fee
20 established pursuant to this subsection shall be assessed only
21 one time for each subject property, regardless of the number of
22 filings related to the subject property.



1 (d) Fees for foreclosure dispute resolution charged
2 pursuant to section 667-S shall be deposited into the
3 foreclosure dispute resolution special fund."

4 SECTION 20. Section 667-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§667-1 Foreclosure by action.** The circuit court may
7 assess the amount due upon a mortgage, whether of real or
8 personal property, without the intervention of a jury[7] and,
9 subject to the requirements of part , shall render judgment
10 for the amount awarded[7] and the foreclosure of the mortgage.
11 Execution may be issued on the judgment[7] as ordered by the
12 court."

13 SECTION 21. Section 667-22, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§667-22 Notice of default[7] and intention to foreclose;**
16 **contents; distribution.** (a) When the mortgagor or the borrower
17 has breached the mortgage agreement[7] and [~~when~~] the
18 foreclosing mortgagee intends to conduct a power of sale
19 foreclosure under this part, the foreclosing mortgagee shall
20 prepare a written notice of default and intention to foreclose
21 addressed to the mortgagor, the borrower, and any guarantor.
22 The notice of default and intention to foreclose shall state:



- 1 (1) The name and address of the current mortgagee;
- 2 (2) The name and last known address of the mortgagor, the
3 borrower, and any guarantor;
- 4 (3) The address or a description of the location of the
5 mortgaged property, [and] the tax map key number, and
6 the certificate of title or transfer certificate of
7 title number if within the jurisdiction of the land
8 court of the mortgaged property;
- 9 (4) The description of the default ~~[, and]~~; provided that
10 if the default is a monetary default, an itemization
11 of the delinquent amount ~~[shall be given]~~;
- 12 (5) The action ~~[that must be taken]~~ required to cure the
13 default~~[,]~~ including the delinquent amount ~~[to cure~~
14 ~~the default, together with]~~ and the estimated amount
15 of the foreclosing mortgagee's attorney's fees and
16 costs, and all other fees and costs related to the
17 default estimated to be incurred by the foreclosing
18 mortgagee ~~[related to the default]~~ by the deadline
19 date;
- 20 (6) The date by which the default must be cured, which
21 ~~[deadline date]~~ shall be at least ~~[sixty]~~ ninety days



1 after the date of the notice of default [7] and
2 intention to foreclose;

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

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

18 (9) Notice of the right of the mortgagor to elect to
19 participate in a dispute resolution process as
20 required by part or to convert the action to a
21 judicial foreclosure pursuant to section 667-B;
22 provided that conversion to a judicial foreclosure may



1 subject the mortgagor to a deficiency judgment that
2 would not be available under a nonjudicial
3 foreclosure;

4 (10) A statement that if the mortgagor elects to
5 participate in dispute resolution pursuant to part
6 _____ , the mortgagor shall not be eligible to convert
7 the foreclosure action to a judicial foreclosure
8 pursuant to section 667-B; and

9 (11) A statement that if the mortgagor elects to convert
10 the foreclosure action to a judicial foreclosure
11 pursuant to section 667-B, the mortgagor shall not be
12 eligible to participate in a dispute resolution
13 pursuant to part _____ ; provided that a court may, in
14 its discretion, order dispute resolution in any
15 judicial foreclosure before the court.

16 (b) The notice of default and intention to foreclose shall
17 also contain wording substantially similar to the following in
18 all capital letters[+] in fourteen point font:

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



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

4 AFTER THE DEADLINE DATE IN THIS NOTICE, TWO
5 PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE
6 LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS
7 (OWNERS) OF THE PROPERTY SO AGREE. TO SHOW THAT ALL
8 OWNERS AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER,
9 ALL OWNERS MUST SIGN A LETTER SHOWING THEY AGREE. ALL
10 OWNERS MUST SEND THE SIGNED LETTER TO THIS OFFICE AT
11 THE ADDRESS GIVEN IN THIS NOTICE.

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

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

20 EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO
21 ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE
22 PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO



1 ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD
2 WITHOUT ANY OPEN HOUSES BEING HELD.

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

11 (c) The notice of default and intention to foreclose shall

12 include:

- 13 (1) A copy of the original mortgage agreement and any
14 subsequent mortgage agreements and assignments;
15 (2) The promissory note signed by both the mortgagor and
16 the mortgagee and any endorsements and allonges on the
17 promissory note; and
18 (3) Any other documents that amend or alter the terms of
19 the original mortgage agreement that were signed by
20 the mortgagor and the mortgagee or any successors or
21 assigns of the mortgagor or the mortgagee.



1 (d) The notice of default and intention to foreclose shall
2 include contact information for at least one local housing
3 counseling agency approved by the United States Department of
4 Housing and Urban Development.

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

- 7 (1) The mortgagor and the borrower [~~+~~] in the same manner
8 as service of a civil complaint under chapter 634 and
9 the Hawaii rules of civil procedure;
- 10 (2) Any prior or junior creditors [~~having~~] who have a
11 recorded lien on the mortgaged property before the
12 recordation of the notice of default and intention to
13 foreclose under section 667-23;
- 14 (3) The state director of taxation;
- 15 (4) The director of finance of the county where the
16 mortgaged property is located; and
- 17 (5) Any other person entitled to receive notice under
18 [~~section 667-5.5-~~] this part."

19 SECTION 22. Section 667-24, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[~~+~~] §667-24 [~~+~~] **Cure of default.** (a) If the default is
22 cured as required by the notice of default [~~+~~] and intention to



1 foreclose or if the parties have reached an agreement to avoid
2 foreclosure pursuant to part _____, the foreclosing mortgagee
3 shall rescind the notice of default[-] and intention to
4 foreclose. Within fourteen days of the date of the cure[-] or
5 an agreement reached by the parties through a dispute resolution
6 process pursuant to part _____, the foreclosing mortgagee shall
7 [se] notify any person who was served with the notice of
8 default[-] and intention to foreclose. If the notice of default
9 and intention to foreclose was recorded, a release of the notice
10 of default and intention to foreclose shall be recorded.

11 (b) If the default is not cured as required by the notice
12 of default[-] and intention to foreclose, the parties have not
13 reached an agreement to avoid foreclosure pursuant to part _____,
14 and the mortgagor has not elected to convert the action into a
15 judicial foreclosure pursuant to section 667-B, the foreclosing
16 mortgagee, without filing a court action and without going to
17 court, may foreclose the mortgage under power of sale to sell
18 the mortgaged property at a public sale."

19 SECTION 23. Section 667-25, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:



1 "(a) [The] Subject to the requirements of part , public
2 sale of the mortgaged property shall take place on the later of
3 the following:

4 (1) At least sixty days after the public notice of the
5 public sale is distributed under section 667-27; or

6 (2) At least fourteen days after the date of the
7 publication of the third public notice advertisement
8 under section 667-27.

9 (b) The public sale of the mortgaged property shall be
10 held only on the grounds or at facilities under the
11 administration of the State in the county where the mortgaged
12 property is located~~[. However, if the borrower, the mortgager,~~
13 ~~and the foreclosing mortgagee all agree in writing, the public~~
14 ~~sale may be held in a different county in the State.]~~ as
15 follows:

16 (1) At a state building designated by the department of
17 accounting and general services, for a public sale of
18 mortgaged property located in the city and county of
19 Honolulu; provided that the department of accounting
20 and general services shall provide notification to the
21 judiciary and the general public of the designated
22 state building;



1 (2) At a state facility or on public land in Hilo, for a
2 public sale of mortgaged property located in the
3 eastern portion of the county of Hawaii;

4 (3) At a state facility or on public land in Kona, for a
5 public sale of mortgaged property located in the
6 western portion of the county of Hawaii;

7 (4) At a state facility or on public land on Maui, for a
8 public sale of mortgaged property located in the
9 county of Maui; and

10 (5) At a state facility or on public land on Kauai, for a
11 public sale of mortgaged property located in the
12 county of Kauai;

13 provided that no public sale shall be held on the grounds or at
14 facilities under the administration of the judiciary. The
15 public sale shall be held during business hours on a business
16 day."

17 SECTION 24. The center for alternative dispute resolution
18 shall submit a report to the legislature regarding the
19 implementation and operations of the alternative dispute
20 resolution process created by this Act, including outcomes of
21 dispute resolutions and any proposals for amendment to the



1 process, no later than twenty days prior to the convening of the
2 2012, 2013, 2014, 2015, and 2016 regular legislative sessions.

3 SECTION 25. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2011-2012 to
6 pay for the initial costs associated with establishing a dispute
7 resolution program for use by mortgagors and mortgagees to
8 attempt to avoid or mitigate the damages of foreclosure in the
9 center for alternative dispute resolution.

10 The sum appropriated shall be deposited into the
11 foreclosure dispute resolution special fund established pursuant
12 to section 667-V, Hawaii Revised Statutes, and shall be expended
13 by the judiciary for the purposes of this Act; provided that
14 upon receipt of sufficient moneys to sustain its purpose, the
15 foreclosure dispute resolution special fund shall reimburse the
16 general fund for the appropriation made pursuant to this Act.

17 PART IV

18 ALTERNATE POWER OF SALE FORECLOSURE PROCESS

19 SECTION 26. Section 667-21, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) As used in this part:



1 "Association" has the same meaning as the term is defined
2 in section 514B-3 and section 421J-2.

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

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

14 Unless the context clearly indicates otherwise, as used in
15 this part, a "foreclosing mortgagee" shall include all of the
16 following entities:

- 17 (1) The foreclosing mortgagee;
18 (2) A party that has an ownership interest in the
19 promissory note on the mortgage agreement or a
20 security interest represented by the mortgage for the
21 subject property;



- 1 (3) Any mortgage servicer that services the mortgage loan
2 on behalf of the mortgagee; and
- 3 (4) The agents, employees, trustees, and representatives
4 of a lender, the foreclosing mortgagee, a mortgagee,
5 or a mortgage servicer.

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

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

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

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

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

21 "Mortgagor" means the mortgagor or borrower named in the
22 mortgage and, unless the context otherwise indicates, includes



1 the current owner of record of the mortgaged property whose
2 interest is subject to the mortgage.

3 "Nonjudicial foreclosure" means foreclosure pursuant to the
4 power of sale foreclosure process under part II.

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

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

10 (1) Owns an interest in the residential property that is
11 encumbered by the mortgage being foreclosed; and

12 (2) Has lived in the residential property as the person's
13 primary residence for a continuous period of not less
14 than two hundred days immediately preceding the date
15 on which the notice is served.

16 "Power of sale" or "power of sale foreclosure" means a
17 nonjudicial foreclosure under this part [~~when the~~] of a mortgage
18 that contains, authorizes, permits, or provides for a power of
19 sale, a power of sale foreclosure, a power of sale remedy, or a
20 nonjudicial foreclosure.

21 "Property" means real, personal, or mixed property [~~(real,~~
22 ~~personal, or mixed),~~]; an interest in property [~~(+)~~]including fee



1 simple, leasehold, life estate, reversionary interest, and any
2 other estate under applicable law~~[+]~~; or other interests that
3 ~~[can]~~ may be subject to the lien of a mortgage.

4 "Record" or "recorded" means the recording or filing of a
5 document ~~[is recorded or filed]~~ with the office of the assistant
6 registrar of the land court under chapter 501 or ~~[recorded]~~ with
7 the registrar of conveyances under chapter 502 ~~[, or both, as~~
8 applicable].

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

11 "Served" means to have service of the notice of default and
12 intention to foreclose made in accordance with the service of
13 process or the service of summons under the Hawaii rules of
14 civil procedure, and under sections 634-35 and 634-36."

15 SECTION 27. Section 667-23, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§667-23[+] Recordation of notice of default[-] and
18 intention to foreclose. Before the deadline date in the notice
19 of default[-] and intention to foreclose, the notice ~~[of~~
20 ~~default]~~ shall be recorded in a recordable form ~~[shall be~~
21 ~~recorded]~~ in a manner similar to recordation of notices of
22 pendency of action under section 501-151 or section 634-51~~[, or~~



1 both⁷] as applicable. The recorded notice of default and
2 intention to foreclose shall have the same effect as a notice of
3 pendency of action. From and after the recordation of the
4 notice of default⁷] and intention to foreclose, any person who
5 becomes a purchaser or encumbrancer of the mortgaged property
6 shall be deemed to have constructive notice of the power of sale
7 foreclosure and shall be bound by the foreclosure."

8 SECTION 28. Section 667-26, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) If the default is not cured as stated in the notice
11 of default⁷] and intention to foreclose, the foreclosing
12 mortgagee shall conduct two open houses of the mortgaged
13 property before the public sale; provided that the foreclosing
14 mortgagee timely received the signed letter of agreement from
15 the mortgagor as required by the notice of default⁷] and
16 intention to foreclose. Only two open houses shall be required
17 even if the date of the public sale is postponed."

18 SECTION 29. Section 667-27, Hawaii Revised Statutes, is
19 amended as follows:

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

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



- 1 (1) The date, time, and place of the public sale;
- 2 (2) The dates and times of the two open houses of the
3 mortgaged property[~~7~~] or [~~if~~] that there will not [~~te~~]
4 be any open houses [~~7, the public notice shall so~~
5 ~~state~~];
- 6 (3) The unpaid balance of the moneys owed to the mortgagee
7 under the mortgage agreement;
- 8 (4) A description of the mortgaged property[~~7~~] including
9 the address or description of the location of the
10 mortgaged property[~~7~~] and the tax map key number of
11 the mortgaged property;
- 12 (5) The name of the mortgagor and the borrower;
- 13 (6) The name of the foreclosing mortgagee;
- 14 (7) The name of any prior or junior creditors [~~having~~] who
15 have a recorded lien on the mortgaged property before
16 the recordation of the notice of default and intention
17 to foreclose under section 667-23;
- 18 (8) The name, the address in the State, and the telephone
19 number in the State of the person in the State
20 conducting the public sale; [~~and~~]
- 21 (9) The terms and conditions of the public sale[~~-~~]; and
- 22 (10) An estimate of the opening bid."



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

2 "(c) If the default is not cured as required by the notice
3 of default [7] and intention to foreclose, the foreclosing
4 mortgagee shall have a copy of the public notice of the public
5 sale of the mortgaged property:

6 (1) Mailed or delivered to the mortgagor and the borrower
7 at their respective last known addresses;

8 (2) Mailed or delivered to any prior or junior creditors
9 [~~having~~] who have a recorded lien on the mortgaged
10 property before the recordation of the notice of
11 default and intention to foreclose under section 667-
12 23;

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

14 (4) Mailed or delivered to the director of finance of the
15 county where the mortgaged property is located;

16 (5) Posted on the mortgaged property or on [~~such other~~]
17 another real property of which the mortgaged property
18 is a part; and

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

21 (d) The foreclosing mortgagee shall have the public notice
22 of the public sale published in the classified section of [a]



1 the daily newspaper [øf] with the largest general circulation
2 expressly in the county where the mortgaged property is located.
3 The public notice shall be published once each week for three
4 consecutive weeks [←], constituting three publications [→]. The
5 public sale shall take place no sooner than fourteen days after
6 the date of the publication of the third public notice
7 advertisement."

8 SECTION 30. Section 667-28, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) The public sale may be either postponed or canceled
11 by the foreclosing mortgagee. Notice of the postponement or the
12 cancellation of the public sale shall be:

- 13 (1) Announced by the foreclosing mortgagee at the date,
14 time, and place of the last scheduled public sale; and
15 (2) Provided[→] upon request[→] to any other person who is
16 entitled to receive the notice of default and
17 intention to foreclose under section [~~667-22(e)~~] 667-
18 22(e).

19 (b) If there is a postponement of the public sale of the
20 mortgaged property, a new public notice of the public sale shall
21 be published once in the format described in section 667-27.

22 The new public notice shall state that it is a notice of a



1 postponed sale. The public sale shall take place no sooner than
2 fourteen days after the date of the publication of the new
3 public notice. [~~No sooner~~] Not less than fourteen days before
4 the date of the public sale, a copy of the new public notice
5 shall be posted on the mortgaged property or on [~~such other~~]
6 another real property of which the mortgaged property is a
7 part[~~]~~ and [~~it~~] shall be mailed or delivered to the mortgagor,
8 to the borrower, and to any other person entitled to receive
9 notice under section 667-27. Notwithstanding the requirements
10 of this subsection, upon the fourth postponement of every series
11 of four consecutive postponements, the foreclosing mortgagee
12 shall follow all of the public notice of public sale
13 requirements of section 667-27, including the requirements of
14 mailing and posting under section 667-27(c) and of publication
15 under section 667-27(d)."

16 SECTION 31. Section 667-29, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~+~~]**§667-29**[~~+~~] **Authorized bidder; successful bidder.** Any
19 person, including the foreclosing mortgagee, shall be authorized
20 to bid for the mortgaged property at the public sale and to
21 purchase the mortgaged property. The highest bidder who meets
22 the requirements of the terms and conditions of the public sale



1 shall be the successful bidder. The public sale shall be
2 considered [~~as being~~] to have been held when the mortgaged
3 property is declared by the foreclosing mortgagee [~~as being~~] to
4 have been sold to the successful bidder. When the public sale
5 [~~is~~] has been held, the successful bidder at the public sale, as
6 the purchaser, shall make a nonrefundable downpayment to the
7 foreclosing mortgagee of not less than ten per cent of the
8 highest successful bid price. If the successful bidder is the
9 foreclosing mortgagee or any other mortgagee [~~having~~] who has a
10 recorded lien on the mortgaged property before the recordation
11 of the notice of default and intention to foreclose under
12 section 667-23, the downpayment requirement may be satisfied by
13 offset and a credit bid up to the amount of the mortgage debt."

14 SECTION 32. Section 667-31, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) After the purchaser completes the purchase by paying
17 the full purchase price and the costs for the purchase, the
18 mortgaged property shall be conveyed to the purchaser by a
19 conveyance document. The conveyance document shall be in a
20 recordable form and shall be signed by the foreclosing mortgagee
21 in the foreclosing mortgagee's name. The mortgagor or borrower



1 shall not be required to sign the conveyance document [~~on his or~~
2 ~~her own behalf~~]."

3 SECTION 33. Section 667-41, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+] §667-41 [+]~~ **Public information requirement.** ~~[All]~~
6 Beginning on September 1, 2011, all financial institutions,
7 mortgagees, lenders, business entities and organizations without
8 limitation, and persons ~~[,]~~ who intend to use the power of sale
9 foreclosure ~~[under]~~ provided by this part ~~[,]~~ under the
10 conditions required by this part, shall also develop
11 informational materials to educate and inform borrowers and
12 mortgagors. These materials shall be made available to the
13 public ~~[,]~~ and provided to the mortgagors of all mortgage
14 agreements entered into, including ~~[the]~~ borrowers at the time
15 of application for a mortgage ~~[or]~~ loan, or other contract
16 containing a power of sale foreclosure provision. These
17 materials, ~~[among other things,]~~ along with other information,
18 shall inform the borrower that the financial institution and
19 other business entities and persons who are authorized under
20 this part to exercise the power of sale foreclosure ~~[,]~~ in the
21 event of the borrower's default, have the option of pursuing
22 either a judicial or nonjudicial foreclosure as provided by law.



1 These informational materials shall fully and completely explain
2 [these] remedies[-] of judicial and nonjudicial foreclosure in
3 simple and understandable terms."

4 SECTION 34. Section 667-34, Hawaii Revised Statutes, is
5 repealed.

6 ["~~§667-34 Foreclosure sale; conclusive presumptions.~~

7 ~~Unless an appeal is taken as set forth in section 667-35, any~~
8 ~~foreclosure sale held in accordance with this part shall be~~
9 ~~conclusively presumed to have been conducted in a legal, fair,~~
10 ~~and reasonable manner. The sale price shall be conclusively~~
11 ~~presumed to be reasonable and equal to the fair market value of~~
12 ~~the property based on the circumstances and on the economic~~
13 ~~conditions at the time of the sale. The statements in the~~
14 ~~recorded affidavit shall be conclusive evidence as to the facts~~
15 ~~stated therein for any purpose, in any court and in any~~
16 ~~proceeding, and in favor of bona fide purchasers and~~
17 ~~encumbrancers for value without notice. The purchaser of the~~
18 ~~mortgaged property shall be conclusively presumed to be a bona~~
19 ~~fide purchaser. Encumbrancers for value include liens placed by~~
20 ~~lenders who provide the purchaser with purchase money in~~
21 ~~exchange for a mortgage or other security interest in the newly-~~
22 ~~conveyed property."]~~



1 SECTION 35. Section 667-35, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§667-35~~ Appeal to circuit court. The borrower, the~~
4 ~~mortgagor, and any creditor having a recorded lien on the~~
5 ~~mortgaged property before the recordation of the notice of~~
6 ~~default under section 667-23, shall have the right to file an~~
7 ~~appeal in the circuit court where the mortgaged property is~~
8 ~~located to contest the presumptions set forth in section 667-34,~~
9 ~~and the statements contained in the affidavit required by~~
10 ~~section 667-32. No appeal shall be filed later than thirty days~~
11 ~~after the recordation of the affidavit. Failure to timely~~
12 ~~appeal shall result in the statements in the affidavit and the~~
13 ~~presumptions set forth in section 667-34 becoming conclusive in~~
14 ~~accordance with the terms of that section."]~~

15 PART V

16 FORECLOSURE MORATORIUM

17 SECTION 36. There shall be a three-month moratorium on
18 foreclosure actions for property located in this State to begin
19 on the effective date of this Act. No foreclosure by action or
20 by power of sale shall proceed, no court shall issue an order
21 for foreclosure pursuant to section 667-1, Hawaii Revised
22 Statutes, the registrar of the land court shall not record an



1 affidavit pursuant to section 501-118, Hawaii Revised Statutes,
2 and the registrar of the bureau of conveyances shall not record
3 an affidavit, a notice of sale, or a conveyance document
4 pursuant to section 667-5 or 667-33, Hawaii Revised Statutes, as
5 the case may be, during the moratorium period established by
6 this Act.

7 SECTION 37. In codifying the new sections added by
8 sections 2, 3, 12, 13, and 19 of this Act, the revisor of
9 statutes shall substitute appropriate section numbers for the
10 letters used in designating the new sections in this Act.

11 SECTION 38. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 39. This Act shall take effect on July 1, 2050;
14 provided that section 19 shall be repealed on June 30, 2016.



Report Title:

Mortgage Foreclosures; Appropriation

Description:

Authorizes the conversion of nonjudicial power of sale foreclosures to judicial foreclosures in certain cases; authorizes recordation of notice of default and intent to foreclose; specifies allowable locations for public auction of foreclosed properties; specifies prohibited conduct; requires suspension of actions by junior lienholders during the pendency of foreclosure; provides that violations of chapter 667 by foreclosing mortgagees shall be unfair and deceptive trade practices; prohibits deficiency judgments after nonjudicial foreclosure; specifies that the interest of a mortgagor is extinguished upon recordation of affidavit of sale; imposes requirements for mortgage servicers including physical presence within the State; creates dispute resolution process for nonjudicial foreclosures; creates dispute resolution special fund; creates requirements for notice of default; makes conforming amendments; makes appropriation. Effective 7/1/2050. (SD2)

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

