

Foreclosure Bill Signed into Law as Act 48

S.B. 651, C.D.1, was signed into law as Act 48 on May 6, 2011. Below is a summary of the major changes:

Non-Judicial Foreclosure Changes

Places a moratorium only on new Part I of HRS Chapter 667 under non-judicial foreclosures through July 1, 2012, but allows for non-judicial foreclosures under Part II, as amended. Part II is amended by removing the requirement that mortgagors must sign over the deed.

Physical Presence Required for Mortgage Servicers

Starting July 1, 2012, requires mortgage servicers, who service 20% or more of the total mortgage servicer market in Hawai'i, to maintain a physical presence in the State.

Unpaid Condo Association Assessments Increased

Increases the maximum special assessment for unpaid common assessments, from 6 to 12 months, that a condominium association may collect from a purchaser of a foreclosed unit from \$3,600 to \$7,200 (effective until September 30, 2014.)

Dispute Resolution Process Created

Creates a mortgage foreclosure dispute resolution program ("Program") from October 1, 2011, to September 30, 2014, for owner-occupants who have resided at residential property for at least 200 consecutive days before being served the foreclosure notice. Dispute resolution can be pursued at the election of the owner-occupant, and provides an owner-occupant the opportunity to negotiate an agreement that avoids foreclosure or mitigates damages where foreclosure is unavoidable. Requires that fees be paid by the parties in order to participate in the Program.

The Program will be established and operated by the Department of Commerce and Consumer Affairs, with monies appropriated from the Compliance Resolution Fund and Mortgage Foreclosure Dispute Resolution Special Fund.

The maximum time for the dispute resolution process as set by statute is 6.5 months. (Note, however, the 60-day period within which the dispute resolution is to be completed can be extended by the neutral.)

No Deficiency Judgments for Non-Judicial Foreclosure

Prohibits mortgagees who foreclose under non-judicial foreclosure proceedings from obtaining deficiency judgments under certain circumstances. Please note: there is a difference between the deficiency judgment requirements under Part I (HRS 667-38) and Part II (page 62 of Act 48.)

Junior Lienholder Rights Clarified

Clarifies that a junior lienholder may only initiate or continue with a nonjudicial foreclosure under part I of Chapter 667, Hawai'i Revised Statutes, if no other foreclosure action is pending. A junior lienholder may only initiate or continue with a non-judicial foreclosure, under part II, during the pendency of a stay during dispute resolution, if the junior lienholder foreclosure was initiated prior to the pendency of stay.

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Conversion from Non-Judicial to Judicial

Specifies that an owner-occupant may opt to convert a non-judicial foreclosure to a judicial foreclosure through December 31, 2012, within 30 days after service of a non-judicial foreclosure notice. (This includes a phase-in period until August 1, 2011, during which an owner-occupant may convert a pending non-judicial foreclosure without regard to certain prior notice and time limit requirements.) Also, creates a filing fee schedule, ranging from \$300-\$575.

Dispute Resolution or Conversion, Not Both

Specifies that an owner-occupant in non-judicial foreclosure has 30 days to elect to pursue either dispute resolution or conversion to a judicial foreclosure, but not both.

Increased Penalties for Mortgagee Violations

Clarifies that foreclosing mortgagees are prohibited from engaging in certain conduct deemed unfair or deceptive act or practices, including the following:

- ◆ Completing nonjudicial foreclosure proceedings during short sale escrows if the short sale offer is greater than the public sale price;
- ◆ Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- ◆ Completing nonjudicial foreclosure proceedings against a mortgagor who is in a federal loan modification program.

Notice Provisions Strengthened for Non-judicial Foreclosures

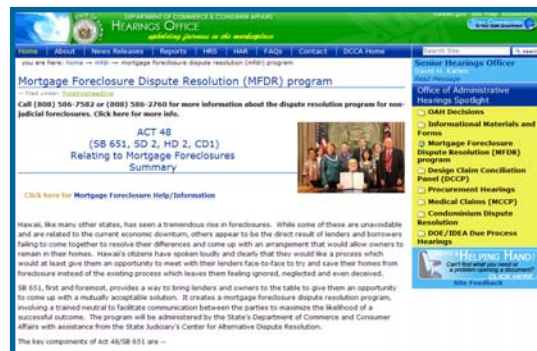
Requires mortgagees to personally serve (in the same manner as a civil complaint) written notice of the intent to foreclose not less than 21 days before the date of sale. (For non-judicial foreclosures by an association for a lien of a non-owner occupant, service can be accomplished by certified or registered mail.) In addition, any notice must be published once for 3 successive weeks in the daily newspaper having the largest circulation in the County of the foreclosed party.

The mortgagor must be given notice on the right to elect to dispute resolution or to convert to a judicial foreclosure. Also, applies a \$250 fee for filing a notice of foreclosure on owner-occupants with the DCCA.

Additional Foreclosure Resources and Information:



HAR Foreclosure Website
www.foreclosurehawaii.org



DCCA Dispute Resolution Resource
www.hawaii.gov/dcca/oah/mfdr