

UNDERSTANDING THE MORTGAGE FORECLOSURE DISPUTE RESOLUTION - ACT 48

Senate Bill 651, first and foremost, provides a way to bring lenders and owners to the table to give them an opportunity to come up with a mutually acceptable solution. It creates a mortgage foreclosure dispute resolution program, involving a trained neutral to facilitate communication between the parties to maximize the likelihood of a successful outcome. The program will be administered by the State Department of Commerce and Consumer Affairs with assistance from the State Judiciary's Center for Alternative Dispute Resolution.

Mortgage Foreclosure Dispute Resolution (MFDR) Program

- The Mortgage Foreclosure Dispute Resolution Program provides an opportunity for owner-occupants of residential property in non-judicial foreclosure to meet face-to-face with the lenders to modify their loans or to work out a payment plan within three months.
- The program is established and administered by the Department of Commerce and Consumer Affairs – Office of Administrative Hearings (DCCA-OAH) with assistance from the Judiciary.
- The program is limited to owner-occupants of residential property who have resided at the property for a minimum of 200 consecutive days.
- Mortgagees and owner-occupants are required to participate in MFDR if the mortgagee chooses to pursue non-judicial foreclosure.
- The non-judicial foreclosure process is suspended until the dispute resolution is completed.
- The Mortgage Foreclosure Dispute Resolution Special Fund is established and funded by fees collected from the parties who choose to participate in the program, and by filing fees from notices of non-judicial foreclosures which are filed in the Bureau of Conveyances and the Land Court.
- The program will begin no later than October 1, 2011 and will continue until September 30, 2014.

How the Mortgage Foreclosure Dispute Resolution (MFDR) Program will work

- Mortgagees may begin filing notices of non-judicial foreclosure with DCCA on October 1, 2011.
- Mortgagees must file a notice of non-judicial foreclosure with DCCA with a filing fee of \$250 which will go to the MFDR special fund.
- Upon receiving the notice, DCCA will send a notice to the owner-occupant regarding the opportunity to engage in dispute resolution, information about the program, an election form, and instructions and contact information for the program and DCCA.

- The owner-occupant has 30 days after the mailing of DCCA's notice to elect dispute resolution and pay a \$300 program fee. If the owner elects dispute resolution, the mortgagee must also pay a \$300 program fee.
- If the owner does not elect dispute resolution, then the foreclosure process is resumed.
- Upon receiving the owner-occupant's election form, DCCA must open a dispute resolution case and notify the parties within 20 days of the date, time, and location of the dispute resolution session. The session must be scheduled between 30 and 60 days from this notification date – unless the parties and neutral agree to an alternative date. In addition, the notice will include information about the dispute resolution process (i.e., rules, requirements, consequences, and penalties for noncompliance).
- The foreclosure process is suspended from the time DCCA sends out written notice of the opening of a dispute resolution case.
- If the parties are able to reach an agreement during the dispute resolution session, the foreclosure is terminated.
- If the parties are unable to reach an agreement during the dispute resolution session, the foreclosure is resumed.
- A mortgagee who fails to comply with the program may not proceed with non-judicial foreclosure. Additional penalties for noncompliance include fines of up to \$1,500.

Other Provisions

- Owner-occupants currently undergoing non-judicial foreclosure have until August 15, 2011 to convert to judicial foreclosure without having to meet certain requirements.
 - [New Court Rules to Convert Non-Judicial Foreclosures to Judicial Foreclosures >>](#)
- After August 15, 2011, owner-occupants subject to non-judicial foreclosure will be able to convert to judicial foreclosure by filing a petition with the Circuit Court within 30 days after receiving a foreclosure notice.
- After filing the petition, there is a 45-day period where all owner-occupants, mortgagors, and signers of the promissory note with interest in the residential property being subject to foreclosure action must file a statement with the Circuit Court that they agree to submit themselves to the judicial process.
- Conversion to judicial foreclosures will not be available to owner-occupants who have elected to participate in the MFDR program.
- Condominium associations are authorized to collect past-due association assessments of up to \$7,200.
- Mortgagees are prohibited from pursuing deficiency judgments against owner-occupants under certain circumstances.
- Mortgage servicers with a 20% market share in the State must maintain a local office and give notice of voluntary surrender of a license at least 30 days before surrender.

Positions

It is DCCA's position that if a foreclosing mortgagee has not conducted a public sale as of the date the Act (May 5, 2011) then at the election of the owner occupant, the mortgagee is required to participate in the Program and may not complete the nonjudicial foreclosure until they have complied with the Program.

§667-41 as amended by the Act provides that beginning on September 1, 2011, all financial institutions, mortgagees, lenders, business entities and organizations and persons, who intend to use the power of sale foreclosure under Part II of HRS Chapter 667, shall also develop informational materials to educate and inform borrowers and mortgagors and that these materials shall be made available to the public and provided to the mortgagors of all mortgage agreements entered into, including the borrowers at the time of application for a mortgage or loan, or other contract containing a power of sale foreclosure provision.

It is DCCA's position that 667-41 should be read prospectively and that its requirements apply to applications for a mortgage, loan or other contracts containing a power of sale starting on September 1, 2011.

Please call (808) 586-7582 or (808) 586-2760 for more information about the Mortgage Foreclosure Dispute Resolution (MFDR) Program.