

Mortgage Foreclosure Statement

Hawaii [Act 48 of 2011 \(SB651, SD2 HD2, CD1\)](#) amended the foreclosure processes under state law to provide greater protection for homeowners. The Act requires certain large mortgage servicers to maintain an office in the state that is staffed by at least one agent to address consumer inquiries or complaints and to accept service of process. The Act voids future foreclosure actions taken by unlicensed, nonexempt mortgage servicers.

Hawaii law allows banks to foreclose on homes either non-judicially through a power-of-sale provision that is included in most mortgage agreements, or through the courts. This Act sets a moratorium on certain new nonjudicial foreclosures until July 1, 2012. It establishes a 3-year Mortgage Foreclosure Dispute Resolution Program for nonjudicial foreclosures of residential real property occupied by mortgagors who have been owner-occupants for at least 200 days immediately before the initiation of a foreclosure proceeding. The bill defines “dispute resolution” to mean a facilitated negotiation between a mortgagor and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

The bill directs the state judiciary, through its Center for Alternative Dispute Resolution, to work with the state department of commerce and consumer affairs to set up the program. It authorizes these entities to contract with a third party to run the program. The Act requires foreclosing mortgagees to provide to mortgagors specific information and notification about the program.

The Act directs that before a public sale may be conducted for a residential property that is occupied by an owner-occupant as a primary residence, the foreclosing mortgagee shall, at the election of the owner-occupant, participate in the mortgage foreclosure dispute resolution program. The Act imposes a stay of foreclosure proceedings on the affected property once the qualified owner-occupant elects to participate in the dispute resolution program.

Dispute resolution sessions are facilitated by a “neutral” person who is a dispute resolution specialist assigned to facilitate the dispute resolution process. The bill specifies that a dispute resolution session shall consist of at least one meeting lasting no more than three hours, which may be extended by the equivalent of one additional three-hour session on the same or a different day at the discretion of the facilitator. The bill generally requires both parties to a dispute to be physically present at the dispute resolution session. A dispute resolution process conducted pursuant to the Act should use the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation’s publicly accessible website unless a different program or process is agreed to by both parties and the neutral facilitator.

The law requires neutral facilitators of dispute resolutions held under the program to file reports indicating whether the parties reached an agreement and whether either did not fully comply with the program’s provisions. The bill enables the neutral facilitator to impose fines and other sanctions on either party for not complying with dispute resolution process.

The bill requires parties in a dispute resolution session who reach an agreement to file a settlement agreement with the neutral facilitator and to file or record documents as necessary to enforce the agreement. It directs the neutral facilitator to file the settlement document with a closing report. The settlement document becomes a contract between the parties and is enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party. If the settlement document allows for foreclosure or other transfer of the subject property, any stay of foreclosure imposed by the Act on the disputed property shall be released upon filing or recording the settlement document with the appropriate court and state agency. The Act also permits lifting a

stay of foreclosure proceedings on property when the parties to a dispute resolution session do not reach an agreement.

The Act directs that the public sale of foreclosed properties must take place during business hours on a business day at certain state facilities that are not administered by the judiciary.

This legislation requires anyone who forecloses on a property within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project to notify, by way of registered, or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure and identify the name or names of the person or people bringing foreclosure unless the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action.

The law generally prohibits such associations from foreclosing on units in their properties for at least sixty days after a unit owner notifies the association of their intention to cure a default. It prohibits such associations from rejecting a “reasonable payment plan” to cure the default, provided that the plan requires the owner to pay at a minimum the current maintenance fee and some amount owed on a past due balance.

This Act establishes procedures to enable an owner-occupant of a residential property that is subject to nonjudicial foreclosure to convert the action to a judicial foreclosure. This starts when the owner-occupant petitions a court. The bill describes the look and contents of notices to convert a nonjudicial foreclosure to a judicial disclosure.

The Act prohibits foreclosing mortgagees from engaging in any of the following practices:

- Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- Specifying a fictitious place in the public notice of the public sale;
- Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale;
- Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than forty-five days after the completion of the public sale;
- Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least five per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;
- Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program.

This Act limits foreclosure actions by junior lienholders. It directs that any foreclosing mortgagee who violates the Act or related state law commits an unfair or deceptive act or practice under state law. It prescribes how a mortgage servicer can voluntarily cease to do business in the state and give up its license.

Submitted as:
Hawaii

Act 48 (SB651, SD2 HD2, CD1)
Status: Enacted into law in 2011.