

STAND. COM. REP. NO. 1510

Honolulu, Hawaii

April 8, 2011

RE: S.B. No. 651
S.D. 2
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 651, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE FORECLOSURES,"

begs leave to report as follows:

The purpose of this bill is to implement a comprehensive strategy to reform the foreclosure laws in Hawaii. Among other things, this bill:

- (1) Voids any actions taken in connection with a mortgage foreclosure by an unlicensed nonexempt person who engages in the business of mortgage servicing;
- (2) Details provisions for a mandatory mortgage foreclosure dispute resolution process;
- (3) Broadens the duties of the Center for Alternative Dispute Resolution (Center) and allows the Center to charge a fee for providing dispute resolution services;
- (4) Establishes the Mandatory Mortgage Foreclosure Dispute Resolution Special Fund (Fund);
- (5) Adopts the Mortgage Foreclosure Task Force's recommendation for a process allowing owner-occupants to convert their non-judicial foreclosure to one with

SB651 HD2 HSCR FIN HMS 2011-3714



judicial oversight and a 45 day phase-in period for converting those non-judicial foreclosures currently in progress;

- (6) Clearly describes the prohibited types of conduct in the foreclosure process and their consequences;
- (7) Replaces the existing non-judicial foreclosure process with a new non-judicial process; and
- (8) Establishes strict regulations of the mortgage servicer industry.

The Roman Catholic Church in the State of Hawaii, Hawaiian Community Assets, National Federation of Filipino American Associations, Faith Action for Community Equity, and numerous concerned individuals testified in support of this bill. The Hawaii Credit Union League, Hawaii Bankers Association, Hawaii Financial Services Association, Community Associations Institute Hawaii Chapter, Hawaii First Inc., Certified Hawaii, and several concerned individuals testified in opposition to this measure. The Judiciary, Department of Commerce and Consumer Affairs (DCCA), Commissioner of Financial Institutions, Hawaii Association of REALTORS, USAA, and Legal Aid Society of Hawaii offered comments.

Your Committee has amended this bill by:

- (1) Revising provisions for the mandatory mortgage foreclosure dispute resolution process by, among other things:
 - (A) Establishing the Mortgage Foreclosure Dispute Resolution Program (Program) within DCCA, and requiring DCCA to administer the Program rather than the Center;
 - (B) Requiring the Center to provide assistance to DCCA regarding contract procurement, performance oversight and compliance with Program requirements, and management services to oversee contracts, including monthly status reports and evaluations;
 - (C) Allowing DCCA to contract with government agencies and private organizations to conduct the functions of the Program without regard to the Hawaii Public Procurement Code;



- (D) Requiring mortgagees to offer dispute resolution to owner-occupants through the Program before conducting a public sale on a property; notify mortgagors that dispute resolution is available; and notify mortgagors that the mortgagee is required to participate in dispute resolution if an owner-occupant so chooses;
- (E) Prohibiting mortgagees from foreclosing on a property until certain specific requirements are met;
- (F) Requiring mortgagees to file non-judicial foreclosure notices with DCCA and establishing a filing fee that will be deposited into the Fund;
- (G) Requiring DCCA to notify mortgagors within 14 days after receipt of the non-judicial foreclosure notice about an owner-occupant's option to engage in dispute resolution, information about the program, an election form and instructions and contact information for DCCA;
- (H) Providing that an owner-occupant has 30 days after receiving notice to elect dispute resolution and pay a Program fee;
- (I) Requiring DCCA to open a dispute resolution case and provide notification within 14 days to the parties of the date, time, and location of the first dispute resolution session after receiving the owner-occupant's election form, and that the notification include information about the dispute resolution process (rules, requirements, and consequences and penalties for noncompliance);
- (J) Requiring the dispute resolution session to be scheduled between 30 and 60 days from the notification date - unless the parties and a dispute resolution specialist agree to an alternative date and providing that the first dispute resolution session will last no more than three hours but may be extended at the discretion of the dispute resolution specialist;



- (K) Stipulating that the mortgagee has 14 days to pay a Program fee to DCCA after the mailing of the notice from DCCA that the mortgagor elected dispute resolution;
- (L) Establishing various requirements for the parties involved in a dispute resolution process including allowing the parties to be represented by another person, including counsel, so long as that person has the authority to negotiate a loan modification; requiring owner-occupants to consult with a Department of Housing and Urban Development (HUD) certified housing counselor thirty days prior to attending the first dispute resolution process; allowing owner-occupants to be assisted by a HUD certified housing counselor during dispute resolutions; compelling the parties to comply with the dispute resolutions specialist's information requests; and allowing the parties to participate by telephone, videoconference, or other contemporaneous medium if a request to do so is approved;
- (M) Requiring the dispute resolution specialist to file a report with DCCA within 14 days after the process is complete;
- (N) Stipulating the circumstances under which a mortgagor or mortgagee fails to comply with the Program and sanctions for noncompliance;
- (O) Stipulating that DCCA's written notification will operate as a stay of the non-judicial foreclosure process and may be filed with the Land Court or Bureau of Conveyances to be released only under certain conditions in compliance with Program requirements;
- (P) Establishing confidentiality requirements;
- (Q) Requiring DCCA to determine the qualifications for a dispute resolution specialist;
- (R) Providing that a dispute resolution specialist will not be liable for their acts or omissions during dispute resolution and are not necessary parties



nor shall they be called as a witness or required to produce documents in any other proceeding related to the Program; and

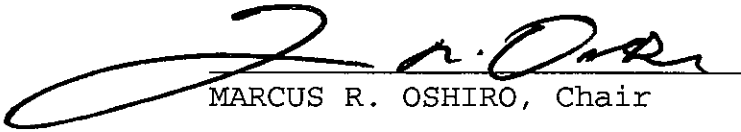
- (S) Clarifying that the Fund is funded by fees collected by the parties who participate in the program, and by filing fees from affidavits and deeds filed after a non-judicial foreclosure sale;
- (2) Exempting the Fund from the provisions of the Compliance Resolution Fund;
- (3) Appropriating monies from the Compliance Resolution Fund to the Fund as start-up monies with the Fund reimbursing the Compliance Resolution Fund;
- (4) Stipulating that the Fund shall be established upon approval of this measure;
- (5) Providing that, when the Program is repealed, all monies deposited in the Fund shall be transferred to the General Fund and Compliance Resolution Fund in proportion to the appropriations made from the these funds as appropriate; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee notes that S.B. No. 652 also addresses the issue of mortgage foreclosures and as these measures move through the legislative process, the effective dates included in both this measure and S.B. No. 652 should be synchronized to produce the most effective legislation possible.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 651, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 651, S.D. 2, H.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



