

STAND. COM. REP. NO.

79

Honolulu, Hawaii

FEB 10 2011

RE: S.B. No. 651
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 651 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to require the Office of Consumer Protection to facilitate mediation between a borrower and a foreclosing lender to attempt to avoid foreclosure before a lender may foreclose on a residential property.

Your Committee received testimony in support of this measure from Hawaiian Community Assets; FACE Hawaii, Oahu and Maui Chapters; FACE Maui; Ewa by Gentry Community Association; and three private citizens. Your Committee received testimony in opposition to this measure from the Department of Budget and Finance; Hawaii Bankers Association; Mortgage Bankers Association of Hawaii; Hawaii Financial Services Association; Community Associations Institute, Hawaii Chapter; Mililani Town Association; Pearl Regency Home Owners Association; Hawaii Credit Union League; Laulima, LLC; and ten private citizens. Your Committee received comments on this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs and the Center for Alternative Dispute Resolution.

Your Committee finds that the rate of residential mortgage foreclosures nationwide has risen sharply over the past several years as a result of the current economic recession. During this time, Hawaii has earned the unfortunate distinction of having one



of the highest foreclosure rates in the nation. Your Committee finds that a high rate of residential foreclosures disrupts not only the lives of individual homeowners, but also the fabric of the community.

Your Committee further finds that several other states and municipalities have mandated dispute resolution for the purpose of avoiding foreclosure or mitigating damages when foreclosure is inevitable. Many of these programs have been successful in allowing families to remain in their homes or coming to solutions that reduce damage to homeowners and the community when foreclosure is the only option. Your Committee finds that key components of a successful program are its mandatory nature and the inclusion of appropriate enforcement mechanisms to compel good faith participation by all parties. Your Committee finds that Nevada's foreclosure mediation program is widely recognized as one such successful program. Therefore, your Committee finds that Nevada's foreclosure mediation program is an appropriate model for a similar mandatory dispute resolution program in this State.

Your Committee also finds that this measure, as amended, mandates dispute resolution between a residential mortgagor and a foreclosing mortgagee, based on Nevada's successful program. Your Committee notes that placing the dispute resolution process in the Judiciary's Center for Alternative Dispute Resolution allows for the use of already-existing resources and institutional expertise while avoiding unnecessary duplication of services within state government.

Your Committee has amended this measure by deleting its contents and replacing them with provisions to:

- (1) Define the scope and purpose of the measure;
- (2) Require that a foreclosing mortgagee participate in dispute resolution pursuant to the requirements of this measure and at the election of a mortgagor before a court may issue a judgment of foreclosure or before a public sale may be held in a nonjudicial power of sale foreclosure;
- (3) Require that notice to the mortgagor of the option to elect dispute resolution, which includes specified information, be included with the notice of foreclosure already required by existing statute;



- (4) Specify that a mortgagor's election to pursue dispute resolution stays the relevant foreclosure proceeding pending the outcome of the dispute resolution;
- (5) Establish requirements for the dispute resolution process including parties' right to representation by counsel or by an approved housing counseling agency, provision of certain information, consequences of each party's failure to attend or comply with the rules of dispute resolution, and disposition of a matter where the parties are unable to come to agreement;
- (6) Require that an agreement of the parties reached through dispute resolution be memorialized in a resolution document that shall be filed with the Court, the Bureau of Conveyances, or the Land Court, as appropriate, and that shall be enforceable in a private contract action;
- (7) Provide for the confidentiality of personal and financial information disclosed in the course of dispute resolution;
- (8) Establish minimum qualifications for facilitators of dispute resolution pursuant to this measure;
- (9) Establish a fee of not more than \$400 for dispute resolution, to be shared equally between the parties;
- (10) Specify that the dispute resolution process established by this measure shall be mandatory for all judicial foreclosures and nonjudicial power of sale foreclosures of residential property occupied as the mortgagor's primary residence excluding actions by an association to collect on a lien owed to the association;
- (11) Authorize the Chief Justice of the Supreme Court to adopt rules for the establishment and administration of the foreclosure mediation program established by this measure;
- (12) Create a special fund to be expended by the Judiciary, composed of fees for dispute resolutions and filing fees for Circuit Court foreclosure actions and documents related to foreclosures filed with the Land Court and



Bureau of Conveyances to fund the Foreclosure Dispute Resolution Program created by this measure;

- (13) Making conforming amendments to existing statutory sections;
- (14) Establishing a moratorium on foreclosures, whether by action or by power of sale, for a period of six months from the effective date of this measure; and
- (15) Making an appropriation to the Foreclosure Dispute Resolution Special Fund from the general fund, to be reimbursed by the Foreclosure Dispute Resolution Special Fund upon the special fund achieving sustainability.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 651, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 651, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



