
A BILL FOR AN ACT

RELATING TO THE BANK OF THE STATE OF HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. (a) The department of commerce and consumer
3 affairs, in conjunction with:

4 (1) The department of accounting and general services;

5 (2) The department of agriculture;

6 (3) The department of the attorney general;

7 (4) The department of budget and finance;

8 (5) The department of human resources development;

9 (6) The department of land and natural resources;

10 (7) The Hawaii housing finance and development
11 corporation;

12 (8) The agribusiness development corporation; and

13 (9) The public land development corporation;

14 shall conduct a comprehensive review of the State's laws
15 relating to financial institutions, mortgage lending, housing
16 development, agricultural development, and land use for the
17 purpose of developing proposed legislation to establish a bank
18 of the State of Hawaii.

1 (b) The division of financial institutions shall be the
2 lead agency charged with the responsibility of coordinating the
3 review required under subsection (a).

4 SECTION 2. The commissioner of financial institutions
5 shall submit a status report of the review to the legislature on
6 a semi-annual basis. The commissioner of financial institutions
7 shall submit the first progress report, along with findings and
8 recommendations, to the legislature not later than twenty days
9 prior to the convening of the 2013 regular session. The
10 commissioner of financial institutions shall submit the final
11 report not later than twenty days prior to the convening of the
12 2014 regular session.

13 SECTION 3. The final report shall include but not be
14 limited to:

15 (1) A graduated schedule of state funds to be transferred
16 to the bank of the State of Hawaii from financial
17 institutions that are serving as depositories for the
18 State; and

19 (2) Proposed legislation to establish a short-term
20 purchase program for distressed residential properties
21 encumbered by problematic mortgages.

1 SECTION 4. The attorney general shall transfer \$500,000
2 for fiscal year 2012-2013, in other funds received as part of
3 the multi-state settlement agreement with mortgage lenders, to
4 the compliance resolution fund established pursuant to section
5 26-9(o), Hawaii Revised Statutes.

6 SECTION 5. There is appropriated out of the compliance
7 resolution fund the sum of \$500,000 or so much thereof as may be
8 necessary for fiscal year 2012-2013 for the purpose of
9 conducting the comprehensive review of the State's laws as
10 provided in this part.

11 The sum appropriated shall be expended by the department of
12 commerce and consumer affairs for the purposes of this Act.

13 PART II

14 SECTION 6. (a) The Hawaii housing finance and development
15 corporation shall establish an interim purchase program for
16 distressed residential properties encumbered by problematic
17 mortgages for the purpose of acquiring title to residential
18 property encumbered by certain mortgages. The legislature
19 intends for the interim purchase program to address problematic
20 mortgages until the bank of the State of Hawaii is established
21 pursuant to law.

1 Under the purchase program, the Hawaii housing finance and
2 development corporation may purchase residential property
3 occupied by one or more persons who hold title to the property
4 if the mortgagee's lien and its supporting documentation fail to
5 adequately demonstrate that the mortgagee has the right to
6 collect on the mortgagor's indebtedness or that the mortgagee
7 has legal authority to foreclose on a property.

8 (b) An owner-occupant who has been using the subject
9 property as a primary residence for a continuous period of not
10 less than two hundred days immediately prior to the date when
11 the owner-occupant received a letter of default on the mortgage
12 or notice that the owner-occupant's application for a mortgage
13 modification under a federally sponsored program has been denied
14 shall be entitled to apply for consideration in the purchase
15 program. The application shall conform to rules adopted by the
16 corporation and shall include copies of:

- 17 (1) The three most recent billing statements for the
18 mortgage loan;
- 19 (2) The promissory note;
- 20 (3) The mortgage agreement; and

1 (4) The letter of default or notice that the owner-
2 occupant's application for a mortgage modification
3 under a federally sponsored program has been denied.

4 (c) Within forty-five days of receiving an application
5 pursuant to subsection (b), the Hawaii housing finance and
6 development corporation shall review the application and
7 determine whether the property shall be accepted for further
8 evaluation.

9 If the corporation accepts the property for further
10 evaluation, within the forty-five day review period, the
11 corporation shall notify the mortgagee and its agents on record
12 at the bureau of conveyances, including all affiliates that may
13 be reported pursuant to any affiliate statement recorded
14 pursuant to sections 454M-5(a)(4) and 667-58(a), Hawaii Revised
15 Statutes, and any entities purporting to represent the
16 mortgagee, as reflected in the mortgage statements provided in
17 the application. The notice shall describe the purchase program
18 and include details about the program's requirements, as set
19 forth by rules adopted by the corporation in accordance with
20 chapter 91, Hawaii Revised Statutes.

21 If the corporation declines to accept the property for
22 further evaluation, the corporation shall provide written

1 notification to the applicant stating the reasons for that
2 determination within the forty-five day review period.

3 (d) Within thirty days of receiving notice under
4 subsection (c), the mortgagee shall submit a written response to
5 the corporation. The response shall include:

6 (1) A copy of the promissory note, signed by the
7 mortgagor, including any endorsements, allonges,
8 amendments, or riders to the note evidencing the
9 mortgage debt and the mortgagee's legal right to
10 enforce the note under section 490:3-203(b) and
11 articles 3 and 9 of the Uniform Commercial Code
12 generally;

13 (2) A copy of the mortgage document and any amendments,
14 riders, or other documentation evidencing the
15 mortgagee's right to foreclose and interest in the
16 property, including any interest as a successor,
17 transferee, or assignee; and

18 (3) A certification under penalty of perjury describing
19 the nature of the mortgagee's legal ownership of the
20 mortgage loan that includes:

21 (A) Information about the chain of possession and the
22 transfer between all holders in due course of the

1 mortgage note from the origination of the
2 mortgage loan to the present mortgagee; provided
3 that descriptions of each transaction that
4 effectuated a transfer of the mortgage note shall
5 include:

6 (i) The names of the individuals involved;

7 (ii) The principal employers and the employers'
8 state of incorporation for the individuals
9 involved;

10 (iii) The authority conferred to the individuals;

11 (iv) The dates on which the mortgage note was
12 negotiated; and

13 (v) The manner in which the note was endorsed;

14 (B) Information about the assignment or transfer of
15 each mortgage agreement, including:

16 (i) The entities assigned the rights to enforce
17 the mortgage agreement;

18 (ii) The individuals who signed documentation to
19 effectuate the transfer and their titles,
20 principal employers, and principal
21 employers' state of incorporation;

- 1 (iii) A description of the authority conferred to
- 2 the individuals;
- 3 (iv) The dates on which the mortgage agreements
- 4 were assigned or transferred;
- 5 (v) The manner of the assignment or transfer;
- 6 and
- 7 (vi) A description of the extent to which the
- 8 mortgage agreement transfers or assignments
- 9 coincided with the negotiations or transfers
- 10 of the mortgage note; and
- 11 (C) The bureau of conveyances document number for
- 12 every assignment or transfer of the mortgage note
- 13 or mortgage agreement recorded and a copy of each
- 14 filing.

15 The mortgagee's response shall provide an explanation for any
16 failure to provide any of the items enumerated in this
17 subsection.

18 Failure to respond to a notice received under subsection
19 (c) within seventy-five days shall result in an automatic
20 referral to the department of the attorney general and the
21 department of commerce and consumer affairs for investigation
22 pursuant to subsection (f), as well as to the attorney general

1 of the state within which the mortgagee is incorporated. An
2 automatic referral under this subsection shall operate as an
3 automatic stay on any foreclosure action, pursuant to subsection
4 (f).

5 (e) At any time after receiving notice under subsection
6 (c), a mortgagee may elect to participate in the purchase
7 program as a qualified mortgagee, pursuant to rules adopted by
8 the corporation in accordance with chapter 91, Hawaii Revised
9 Statutes.

10 (f) Within forty-five days of receiving the mortgagee's
11 response pursuant to subsection (d), the corporation shall
12 determine whether to refer the subject mortgage loan to the
13 department of the attorney general, the department of commerce
14 and consumer affairs, and the attorney general of the state
15 within which the mortgagee is incorporated for a legal
16 investigation and possible action to determine the mortgagee's
17 legal authority to collect on the mortgage indebtedness and
18 enforce the mortgage agreement; provided that if no document was
19 filed or recorded with respect to a given assignment or transfer
20 of the mortgage note or mortgage agreement, or the filing or
21 recording occurred more than months after the assignment or
22 transfer, the corporation shall make the referral.

1 Written notification of the referral for legal
2 investigation pursuant to this section shall operate as a stay
3 of any foreclosure proceeding under chapter 667, Hawaii Revised
4 Statutes, and may be filed in the office of the assistant
5 registrar of the land court under chapter 501, Hawaii Revised
6 Statutes, or recorded in the bureau of conveyances under chapter
7 502, Hawaii Revised Statutes, or both, as appropriate.

8 Upon a stay pursuant to this subsection, a mortgagee shall
9 not foreclose upon a mortgage subject to the stay until the
10 department of the attorney general or the department of commerce
11 and consumer affairs releases the stay by recording a release at
12 the bureau of conveyances, or as otherwise provided by law or
13 court order.

14 If the corporation determines that a referral for
15 investigation is not warranted, the corporation shall promptly
16 notify the mortgagee and the owner-occupant applicant before the
17 end of the forty-five day period that the subject property is no
18 longer being evaluated by the purchase program. The notice may
19 be filed in the office of the assistant registrar of the land
20 court under chapter 501, Hawaii Revised Statutes, or recorded in
21 the bureau of conveyances under chapter 502, Hawaii Revised
22 Statutes, or both, as appropriate.

1 Nothing in this subsection shall be construed as preventing
2 a mortgagee from filing a claim in circuit court to lift the
3 stay by order.

4 (g) Terms and conditions for owner-occupants and qualified
5 mortgagees participating in the purchase program shall be set
6 forth by rules adopted by the corporation in accordance with
7 chapter 91, Hawaii Revised Statutes; provided that:

8 (1) If the mortgagee agrees to participate in the purchase
9 program, the stay on any foreclosure process and the
10 referral for investigation made pursuant to subsection
11 (f) shall be withdrawn;

12 (2) If the owner-occupant declines the offer purchase
13 price under paragraph (3), the stay on any foreclosure
14 process and the referral for investigation made
15 pursuant to subsection (f) shall be withdrawn;

16 (3) Upon agreement by the owner-occupant and the qualified
17 mortgagee, the corporation may offer to purchase the
18 subject property from the owner-occupant for a price
19 that shall not exceed seventy-five per cent of the
20 principal balance due on the mortgage loan at the time
21 of the mortgagee's election to participate;

- 1 (4) The amount of the purchase price of the property shall
2 be paid to the qualified mortgagee and shall be deemed
3 to fully satisfy the subject mortgage debt and release
4 the lien held by the mortgagee;
- 5 (5) The former owner-occupant shall be permitted to rent
6 the property for a minimum period of six months from
7 the date of transfer at a rate that shall be based
8 upon an independent appraisal of the fair-market rent
9 for the property;
- 10 (6) The former owner-occupant shall be required to consult
11 with an approved housing counselor or an approved
12 budget and credit counselor as defined under chapter
13 667, Hawaii Revised Statutes;
- 14 (7) Upon the recommendation of an approved housing
15 counselor or an approved budget and credit counselor,
16 the corporation may offer to sell the subject property
17 back to the former owner-occupant for a price that
18 shall not exceed ninety per cent of the prior
19 mortgagee's mortgage loan balance; provided that the
20 payment plan, which may or may not include a mortgage,
21 is reasonable and affordable to the owner-occupant;
22 and

1 (8) The owner-occupant shall:
2 (A) Be prohibited from selling the property for a
3 period of months after repurchasing it
4 pursuant to paragraph (7); and
5 (B) Agree that, upon any resale of the property to a
6 subsequent purchaser, the owner-occupant shall
7 pay the corporation a share of the appreciation
8 represented by the proportion of the price at
9 which the owner-occupant purchased the property
10 from the corporation to the subsequent sale
11 price; provided that the property is sold for
12 fair market value at a price approved by the
13 corporation.

14 (h) Pursuant to rules adopted by the corporation in
15 accordance with chapter 91, Hawaii Revised Statutes, the
16 corporation shall provide grants to approved housing counselors
17 and approved budget and credit counselors, as defined under
18 chapter 667, Hawaii Revised Statutes, that are based within the
19 State for the purposes of subsection (g).

20

1 PART III

2 SECTION 7. Effective January 1, 2016, the bank of the
3 State of Hawaii shall be deemed licensed to engage in the
4 business of a Hawaii financial institution.

5 SECTION 8. On January 1, 2016, the director of finance
6 shall deposit with the bank of the State of Hawaii a sum of not
7 less than \$500,000,000 of state funds that were held by one or
8 more private financial institutions on December 31, 2013, on
9 behalf of the State.

10 SECTION 9. Effective January 1, 2017, the director of
11 finance shall ensure that not less than fifty per cent of all
12 state funds required to be held in depositories on behalf of the
13 State shall be deposited in the bank of the State of Hawaii.

14 SECTION 10. Effective January 1, 2018, the director of
15 finance shall ensure that not less than seventy-five per cent of
16 all state funds required to be held in depositories on behalf of
17 the State shall be deposited in the bank of the State of Hawaii.

18 SECTION 11. This Act shall take effect on July 1, 2212.

Report Title:

Financial Institutions; State Bank; Hawaii Housing Finance and Development Corporation; Mortgage Foreclosure; Appropriation

Description:

Directs DCCA to conduct a comprehensive review of relevant state laws to develop legislation to establish the bank of the State of Hawaii. Appropriates funds to conduct the review. Directs the Hawaii housing finance and development corporation to establish and operate an interim purchase program for distressed residential properties encumbered by problematic mortgages until the bank of the State of Hawaii is operational. Establishes minimum percentages of state funds that shall be deposited in the bank of the State of Hawaii. Effective 7/1/2212. (Proposed HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.