
A BILL FOR AN ACT

RELATING TO MORTGAGE DISPUTE RESOLUTION.

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

1 SECTION 1. The legislature finds that Act 48, Session Laws
2 of Hawaii 2011, has not improved the mortgage foreclosure system
3 in Hawaii as intended. Of the 2,733 foreclosures that were
4 filed in 2011, only seven per cent were terminated. This has
5 left more than two thousand five hundred cases overloading the
6 courts. Meanwhile, the mortgage foreclosure dispute resolution
7 program established by Act 48 for nonjudicial foreclosures of
8 residential real property has yet to serve any clients despite
9 being operational for months.

10 The current dispute resolution process creates a potential
11 waiting period of one hundred ninety-five days or more.

12 The purpose of this Act is to shorten the time period for
13 completing the mortgage foreclosure dispute resolution process
14 to save time and money for the judicial system, lenders, and
15 borrowers; increase the number of dispute resolution cases that
16 can take place annually; and facilitate the resolution of
17 nonjudicial foreclosures in the State.



1 SECTION 2. Section 667-75, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The notice required by subsection (a) shall be
4 printed in not less than fourteen-point font and include:

5 (1) The name and contact information of the mortgagor and
6 the mortgagee;

7 (2) The subject property address and legal description,
8 including tax map key number and the certificate of
9 title number if within the land court's jurisdiction;

10 (3) The name and contact information of a person or entity
11 authorized to negotiate a loan modification on behalf
12 of the mortgagee;

13 (4) Information about the mortgage foreclosure dispute
14 resolution program under this part;

15 (5) A form prescribed by the department for an owner-
16 occupant to elect or to waive participation in the
17 mortgage foreclosure dispute resolution program that
18 shall contain instructions for the completion and
19 return of the form to the department and the
20 department's mailing address;

21 [~~4~~] (6) A statement that the mortgagor shall consult with
22 an approved housing counselor or an approved budget



1 and credit counselor at least [~~thirty~~] five days prior
2 to the first day of a scheduled dispute resolution
3 session;

4 [~~5~~] (7) Contact information for all local approved
5 housing counselors;

6 [~~6~~] (8) Contact information for all local approved budget
7 and credit counselors;

8 [~~7~~] (9) A statement that the mortgagor electing to
9 participate in the mortgage foreclosure dispute
10 resolution program shall provide a certification under
11 penalty of perjury to the department that the
12 mortgagor is an owner-occupant of the subject
13 property, including [~~supporting documentation~~] a
14 description of acceptable supporting documentation as
15 required by section 667-78(a)(2);

16 [~~8~~] (10) A general description of the information that an
17 owner-occupant electing to participate in the mortgage
18 foreclosure dispute resolution program is required to
19 provide to participate in the program as described
20 under section 667-80(c)(2); and

21 [~~9~~] (11) A statement that the owner-occupant shall elect
22 to participate in the mortgage foreclosure dispute



1 resolution program pursuant to this part no later than
 2 [~~thirty~~] fifteen days after the [~~department's mailing~~]
 3 owner-occupant's receipt of the notice or the right
 4 shall be waived."

5 SECTION 3. Section 667-76, Hawaii Revised Statutes, is
 6 amended by amending subsection (a) to read as follows:

7 "(a) Within three days after a mortgagee serves a
 8 foreclosure notice on an owner-occupant pursuant to section
 9 667-5 or 667-22, the mortgagee shall file the foreclosure
 10 notice, including the notice of dispute resolution availability
 11 required under section 667-75, with the department and pay a
 12 filing fee of \$250, which shall be deposited into the mortgage
 13 foreclosure dispute resolution special fund established under
 14 section 667-86."

15 SECTION 4. Section 667-78, Hawaii Revised Statutes, is
 16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) An owner-occupant elects to participate in the
 19 mortgage foreclosure dispute resolution program by returning to
 20 the department:

21 (1) The completed program election form provided pursuant
 22 to section [~~667-77(2)] 667-75(b)(5);~~



1 (2) Certification under penalty of perjury that the
2 mortgagor is an owner-occupant, accompanied with any
3 supporting documentation, including copies of recent
4 utility billing statements, voter registration
5 records, real estate property tax records, or state
6 identification forms; and

7 (3) A program fee of \$300.

8 The completed form and fees shall be received by the department
9 no later than ~~[thirty]~~ fifteen days after ~~[mailing]~~ the owner-
10 occupant's receipt of the ~~[department's notification pursuant~~
11 ~~to]~~ notice required under section ~~[667-77.]~~ 667-75. The
12 department shall forward a copy of the completed form to the
13 pertinent mortgagee."

14 2. By amending subsection (c) to read:

15 "(c) If the owner-occupant does not elect to participate
16 in dispute resolution pursuant to this part~~[, the department~~
17 ~~shall notify the mortgagee within ten days of receiving an~~
18 ~~election form indicating nonelection or the termination of the~~
19 ~~thirty day time period for election. After receiving the~~
20 ~~department's notification,~~] within fifteen days after the owner-
21 occupant's receipt of the notice required under section 667-75,
22 the mortgagee may proceed with the nonjudicial foreclosure



1 process according to the process provided in part I or part II
2 of this chapter, as applicable[-], no sooner than thirty days
3 after the owner-occupant's receipt of the notice required under
4 section 667-75."

5 SECTION 5. Section 667-79, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) If an owner-occupant elects to participate in the
8 mortgage foreclosure dispute resolution program, the department
9 shall open a dispute resolution case. Within [~~twenty~~] five days
10 of receipt of the owner-occupant's election form and fee in
11 accordance with section 667-78, the department shall mail
12 written notification of the case opening to the parties by
13 registered mail, return receipt requested, which shall include:

- 14 (1) Notification of the date, time, and location of the
15 dispute resolution session;
- 16 (2) An explanation of the dispute resolution process;
- 17 (3) Information about the dispute resolution program
18 requirements; and
- 19 (4) Consequences and penalties for noncompliance.

20 The dispute resolution session shall be scheduled for a date no
21 less than [~~thirty~~] ten and no more than [~~sixty~~] fifteen days
22 from the date of the notification of case opening, unless

1 mutually agreed to by the parties and the neutral.

2 (b) Within [~~fourteen~~] seven days of the date of the
3 mailing of the written notification, the mortgagee shall pay a
4 program fee of \$300 to the department."

5 SECTION 6. Section 667-80, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsections (b), (c), and (d) to read:

8 "(b) No fewer than [~~thirty~~] five days prior to the first
9 day of a scheduled dispute resolution session pursuant to this
10 part, the owner-occupant shall consult with an approved housing
11 counselor or approved budget and credit counselor.

12 (c) The parties shall comply with all information requests
13 from the department or neutral. No less than [~~fifteen~~] five
14 days prior to the first day of the scheduled dispute resolution
15 session:

16 (1) The mortgagee shall provide to the department and the
17 mortgagor:

18 (A) A copy of the promissory note, signed by the
19 mortgagor, including any endorsements, allonges,
20 amendments, or riders to the note evidencing the
21 mortgage debt;

22 (B) A copy of the mortgage document and any



1 amendments, riders, or other documentation
2 evidencing the mortgagee's right of nonjudicial
3 foreclosure and interest in the property
4 including any interest as a successor or
5 assignee; and
6 (C) Financial records and correspondence that confirm
7 the mortgage loan is in default.
8 (2) The owner-occupant shall provide to the department and
9 the mortgagee:
10 (A) Documentation showing income qualification for a
11 loan modification, including any copies of pay
12 stubs, W-2 forms, social security or disability
13 income, retirement income, child support income,
14 or any other income that the owner-occupant deems
15 relevant to the owner-occupant's financial
16 ability to repay the mortgage;
17 (B) Any records or correspondence available which may
18 dispute that the mortgage loan is in default;
19 (C) Any records or correspondence available
20 evidencing a loan modification or amendment;
21 (D) Any records or correspondence available that
22 indicate the parties are currently engaged in

1 bona fide negotiations to modify the loan or
2 negotiate a settlement of the delinquency;

3 (E) Names and contact information for housing
4 counselors, approved budget and credit
5 counselors, or representatives of the mortgagee,
6 with whom the owner-occupant may have or is
7 currently working with to address the
8 delinquency; and

9 (F) Verification of counseling by an approved housing
10 counselor or approved budget and credit
11 counselor.

12 (d) The dispute resolution session shall consist of at
13 least one meeting lasting no more than three hours, which may be
14 extended by the equivalent of one additional three-hour session
15 on the same or a different day at the neutral's discretion.

16 The parties shall be present in person at the dispute
17 resolution session; provided that a party may submit a written
18 request to the department at least [~~fourteen~~] five days prior to
19 the scheduled dispute resolution session to participate through
20 telephone, videoconference, or other contemporaneous
21 telecommunications medium. A request to participate through a
22 telecommunications medium shall be granted only for good cause



1 and upon agreement of the neutral and the other party to the
2 dispute resolution. For purposes of this subsection, "good
3 cause" means an event or circumstance outside of the requesting
4 party's control that makes in-person participation impossible.
5 The neutral shall have the discretion to postpone a dispute
6 resolution session in order to allow the requesting party to
7 participate in person; provided that postponement shall not
8 delay the dispute resolution process beyond timelines
9 established by this part."

10 2. By amending subsection (f) to read:

11 "(f) The dispute resolution process shall conclude within
12 [~~sixty~~] twenty-one days from the first scheduled meeting between
13 the parties to the dispute resolution and the neutral; provided
14 that the neutral shall have the authority to extend this period.
15 Nothing in this part shall be construed to require the dispute
16 resolution process to take the full [~~sixty~~] twenty-one days
17 allotted to reach a negotiated agreement."

18 SECTION 7. Section 667-81, Hawaii Revised Statutes, is
19 amended by amending subsections (a), (b), and (c) to read as
20 follows:

21 "(a) Within [~~ten~~] five days from the conclusion of the
22 dispute resolution, the neutral shall file a closing report with



1 the department, which verifies the parties' presence at the
2 session, compliance with the requirements of this part, and
3 reports whether the parties reached an agreement to resolve the
4 dispute and the date of the dispute resolution's conclusion.
5 Upon receipt of the neutral's closing report, the department
6 shall close the case. The department shall forward a written
7 copy of the neutral's closing report by registered or certified
8 mail to the parties within five days after receipt from the
9 neutral.

10 (b) If, despite the parties' participation in the dispute
11 resolution process and compliance with the requirements of this
12 part, the parties are not able to come to an agreement, the
13 neutral shall file a closing report with the department that the
14 parties met the program requirements. The mortgagee may file or
15 record the report at the bureau of conveyances or the land
16 court, as appropriate. Upon recording of the report pursuant to
17 this subsection, the foreclosure process shall resume along the
18 timeline as it existed on the date before the mortgagor elected
19 dispute resolution, and may proceed as otherwise provided by
20 law. The mortgagee shall notify the mortgagor of the recording
21 date and document number of this report and the deadline date to
22 cure default in an amended foreclosure notice. Nothing in this



1 subsection shall be construed to require the neutral to wait the
2 full [~~sixty~~] twenty-one days allotted for dispute resolution to
3 determine that the parties were unable to reach an agreement and
4 file a report.

5 (c) If the parties have complied with the requirements of
6 this part and have reached an agreement, the agreement shall be
7 memorialized in a settlement document signed by the parties or
8 their authorized representatives. If the parties or their
9 authorized representatives participate in the dispute resolution
10 session in person, the settlement document shall be signed in
11 the presence of the neutral. If any of the parties or their
12 authorized representatives participate in the dispute resolution
13 through telephone, videoconference, or other immediately
14 available contemporaneous telecommunications medium, the
15 settlement document shall be signed and returned to the neutral
16 no later than [~~ten~~] seven days after the conclusion of the
17 dispute resolution session. The parties shall be responsible
18 for drafting any agreement reached, and for filing or recording
19 with the land court or the bureau of conveyances, as
20 appropriate, and enforcing the settlement document. The neutral
21 shall file the settlement document with the neutral's closing
22 report. The settlement document shall be a contract between the



1 parties and shall be enforceable in a private contract action in
2 a court of appropriate jurisdiction in the event of breach by
3 either party. If the settlement document allows for foreclosure
4 or other transfer of the subject property, the stay of the
5 foreclosure under section 667-83 shall be released upon filing
6 or recording the settlement document with the land court or
7 bureau of conveyances, as appropriate. Thereafter, the land
8 court or bureau of conveyances may record a notice of sale or
9 other conveyance document, as appropriate."

10 SECTION 8. Section 667-77, Hawaii Revised Statutes, is
11 repealed.

12 ~~"[§667-77] Notification to mortgagor by department.~~
13 ~~Within ten days after the mortgagee's filing of a notice of~~
14 ~~default and intention to foreclose with the department, the~~
15 ~~department shall mail a written notification by registered or~~
16 ~~certified mail to the mortgagor that a notice of default and~~
17 ~~intention to foreclose has been filed with the department. The~~
18 ~~notification shall inform the mortgagor of an owner-occupant's~~
19 ~~right to elect to participate in the foreclosure dispute~~
20 ~~resolution program and shall include:~~

21 (1) ~~Information about the mortgage foreclosure dispute~~
22 ~~resolution program;~~



- 1 ~~(2) A form for an owner-occupant to elect or to waive~~
2 ~~participation in the mortgage foreclosure dispute~~
3 ~~resolution program pursuant to this part that shall~~
4 ~~contain instructions for the completion and return of~~
5 ~~the form to the department and the department's~~
6 ~~mailing address;~~
- 7 ~~(3) A statement that the mortgagor electing to participate~~
8 ~~in the mortgage foreclosure dispute resolution program~~
9 ~~shall provide a certification under penalty of perjury~~
10 ~~to the department that the mortgagor is an owner-~~
11 ~~occupant of the subject property, including a~~
12 ~~description of acceptable supporting documentation as~~
13 ~~required by section 667-78(a)(2);~~
- 14 ~~(4) A statement that the owner-occupant shall elect to~~
15 ~~participate in the mortgage foreclosure dispute~~
16 ~~resolution program pursuant to this part no later than~~
17 ~~thirty days after the department's mailing of the~~
18 ~~notice or the owner-occupant shall be deemed to have~~
19 ~~waived the option to participate in the mortgage~~
20 ~~foreclosure dispute resolution program;~~
- 21 ~~(5) A description of the information required under~~
22 ~~section 667-80(c)(2) that the owner-occupant shall~~



1 ~~provide to the mortgagee and the neutral assigned to~~
2 ~~the dispute resolution;~~

3 ~~(6) A statement that the owner occupant shall consult with~~
4 ~~an approved housing counselor or approved budget and~~
5 ~~credit counselor at least thirty days prior to the~~
6 ~~first day of a scheduled dispute resolution session;~~

7 ~~(7) Contact information for all local approved housing~~
8 ~~counselors;~~

9 ~~(8) Contact information for all local approved budget and~~
10 ~~credit counselors; and~~

11 ~~(9) Contact information for the department.~~

12 ~~The notification shall be mailed to the subject property address~~
13 ~~and any other addresses for the mortgagor as provided in the~~
14 ~~mortgagee's notice of dispute resolution under [section] 667-75~~
15 ~~and the foreclosure notice under section 667-5 or 667-22(a)."]~~

16 SECTION 9. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 10. This Act shall take effect upon its approval.

19

INTRODUCED BY: *Bil Ruizer*

JAN 25 2012



H.B. NO. 2738

Report Title:

Nonjudicial Mortgage Foreclosures; Dispute Resolution

Description:

Encourages the use of the mortgage foreclosure dispute resolution process for nonjudicial foreclosures of residential property, by shortening the time period for completing the process.

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