
A BILL FOR AN ACT

RELATING TO MEDIATION AFFECTING JUDICIAL FORECLOSURE.

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, among other things established a mortgage
3 foreclosure dispute resolution program to require mortgagees, at
4 the mortgagor's election and prior to conducting a public sale
5 of the subject residential property, to participate in dispute
6 resolution to negotiate an agreement to avoid foreclosure or
7 mitigate damages in cases where foreclosure is unavoidable.
8 Application of the dispute resolution program is limited to
9 nonjudicial foreclosures conducted by power of sale.

10 Following the commencement of the dispute resolution
11 program, many mortgagees bypassed the program by instead
12 pursuing foreclosures in court. Consequently, the rate of
13 judicial foreclosures rose dramatically while the dispute
14 resolution program remained dormant. The principal reason
15 mortgagees cited for their refusal to use the nonjudicial
16 foreclosure process and, as a result, the dispute resolution
17 program, was the risk of incurring significant penalties under



1 section 667-60, Hawaii Revised Statutes, relating to unfair or
2 deceptive acts or practices, for any violation of the mortgage
3 foreclosure law. Mortgagees expressed concern about potentially
4 incurring penalties for minor violations of the mortgage
5 foreclosure law, such as missed deadlines or using the wrong
6 font sizes on printed materials. Hence, mortgagees largely
7 opted to pursue foreclosures under the supervision of a court.

8 In response to the mortgagees' concerns and to ensure the
9 availability of both the nonjudicial foreclosure process and the
10 dispute resolution program, Act 182, Session Laws of Hawaii
11 2012, among other things specified the categories of conduct
12 that expressly constitute an unfair or deceptive act or
13 practice, in an effort to narrow the application of this
14 provision in the foreclosures law. However, the legislature
15 finds that more action should be taken to make the dispute
16 resolution program available to all homeowners facing the
17 prospect of losing their homes to foreclosure, including
18 judicial foreclosures.

19 The purpose of this Act is to assist homeowners at risk of
20 foreclosure and expand the availability of mandatory mortgage
21 foreclosure dispute resolution by requiring mortgagees, at the



1 mortgagor's election, to participate in the mortgage foreclosure
2 dispute resolution program administered by the department of
3 commerce and consumer affairs, to avoid foreclosure or to
4 mitigate damages from foreclosure prior to filing a judicial
5 foreclosure action for property that has been the mortgagor's
6 primary residence for a specified period. This Act also applies
7 to judicial foreclosure actions filed prior to the effective
8 date of this Act and pending an initial court hearing. It is
9 the intent of the legislature that nothing in this Act be
10 construed as affecting the dispute resolution provisions for
11 nonjudicial foreclosures, as provided in part V of chapter 667,
12 Hawaii Revised Statutes, as those provisions existed on the day
13 prior to the effective date of this Act.

14 SECTION 2. Section 667-1, Hawaii Revised Statutes, is
15 amended by amending the definitions of "owner-occupant" and
16 "serve" to read as follows:

17 "Owner-occupant" means a person, at the time that a notice
18 of default and intention to foreclose is served on the mortgagor
19 under the power of sale[+], or at the time a notice of dispute
20 resolution availability is served on the mortgagor pursuant to
21 section 667-75(b), as applicable:



1 (1) Who owns an interest in the residential property, and
2 the interest is encumbered by the mortgage being
3 foreclosed; and

4 (2) For whom the residential property is and has been the
5 person's primary residence for a continuous period of
6 not less than two hundred days immediately preceding
7 the date on which the notice is served.

8 "Serve", when referring to providing notice of intention to
9 foreclose or notice of default and intention to foreclose
10 pursuant to a nonjudicial foreclosure, or when referring to
11 providing notice of dispute resolution availability under
12 section 667-75(b), means to have service of the notice of
13 default and intention to foreclose made in accordance with the
14 service of process or the service of summons under the Hawaii
15 rules of civil procedure and under sections 634-35 and 634-36,
16 excluding however, any return or affidavit of service
17 obligations required therein."

18 SECTION 3. . Section 667-60, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:



1 "(a) Any foreclosing mortgagee who engages in any of the
2 following violations of this chapter shall have committed an
3 unfair or deceptive act or practice under section 480-2:

4 (1) Failing to provide a borrower or mortgagor with, or
5 failing to serve as required, the information required
6 by section 667-22 or 667-55;

7 (2) Failing to publish, or to post, information on the
8 mortgaged property, as required by section 667-27 or
9 667-28;

10 (3) Failing to take any action required by section 667-24
11 if the default is cured or an agreement is reached;

12 (4) Engaging in conduct prohibited under section 667-56;

13 (5) Holding a public sale in violation of section 667-25;

14 (6) Failing to include in a public notice of public sale
15 the information required by section 667-27 or section
16 667-28;

17 (7) Failing to provide the information required by section
18 667-41;

19 (8) With regard to mortgage foreclosure dispute resolution
20 under part V[+]



- 1 ~~(A) Failing], failing~~ to provide notice of the
- 2 availability of dispute resolution as required by
- 3 section 667-75;
- 4 ~~[(B) Participating in dispute resolution without~~
- 5 ~~authorization to negotiate a loan modification,~~
- 6 ~~or without access to a person so authorized, as~~
- 7 ~~required by section 667-80(a)(1);~~
- 8 ~~(C) Failing to provide required information or~~
- 9 ~~documents as required by section 667-80(c); or~~
- 10 ~~(D) Completing a nonjudicial foreclosure if a~~
- 11 ~~neutral's closing report under section 667-82~~
- 12 ~~indicates that the foreclosing mortgagee failed~~
- 13 ~~to comply with requirements of the mortgage~~
- 14 ~~foreclosure dispute resolution program;~~
- 15 ~~(9) Completing a nonjudicial foreclosure while a stay is~~
- 16 ~~in effect under section 667-83;]~~
- 17 (9) Filing a foreclosure action under part IA without
- 18 compliance with part V;
- 19 (10) Failing to distribute sale proceeds as required by
- 20 section 667-31;



1 (11) Making any false statement in the affidavit of public
2 sale required by section 667-32;

3 (12) Attempting to collect a deficiency in violation of
4 section 667-38; and

5 (13) Failing to file a foreclosure notice with the
6 department as required by section 667-76(a)."

7 SECTION 4. Section 667-71, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) This part shall apply to ~~[nonjudicial]~~;

10 (1) Nonjudicial foreclosures conducted by power of sale
11 under part II~~[, of]~~; and

12 (2) Mortgagees seeking to file a foreclosure action under
13 part IA;

14 for residential ~~[real]~~ property that is occupied by one or more
15 mortgagors who are owner-occupants."

16 SECTION 5. Section 667-74, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§667-74 Availability of dispute resolution required
19 before foreclosure. Before [a]:

20 (1) A public sale may be conducted pursuant to section
21 667-25; or



1 (2) A foreclosure action under part IA may be filed;
 2 for a residential property that is occupied by an owner-
 3 occupant, the [~~foreclosing~~] mortgagee, at the election of the
 4 owner-occupant, shall participate in the mortgage foreclosure
 5 dispute resolution program under this part to attempt to
 6 negotiate an agreement that avoids foreclosure or mitigates
 7 damages in cases where foreclosure is unavoidable."

8 SECTION 6. Section 667-75, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "§667-75 Notice of dispute resolution availability
 11 required. (a) A foreclosure notice served pursuant to section
 12 667-22(e) shall include notice that the mortgagee is required,
 13 at the election of an owner-occupant, to participate in the
 14 mortgage foreclosure dispute resolution program pursuant to this
 15 part to attempt to avoid foreclosure or to mitigate damages
 16 where foreclosure is unavoidable.

17 (b) A mortgagee seeking to file a foreclosure action under
 18 part IA against a residential property shall first serve notice
 19 to the owner-occupant that the mortgagee is required, at the
 20 election of the mortgagor, to participate in the mortgage
 21 foreclosure dispute resolution program pursuant to this part to



1 attempt to avoid foreclosure or to mitigate damages where
2 foreclosure is unavoidable.

3 ~~[(b)]~~ (c) The notice required by [subsection] subsections
4 (a) and (b) shall be printed in not less than fourteen-point
5 font and include:

- 6 (1) The name and contact information of the mortgagor and
7 the mortgagee;
- 8 (2) The subject property address and legal description,
9 including tax map key number and the certificate of
10 title or transfer certificate of title number if
11 registered in the land court;
- 12 (3) The name and contact information of a person or entity
13 authorized to negotiate a loan modification on behalf
14 of the mortgagee;
- 15 (4) A statement that the mortgagor shall consult with an
16 approved housing counselor or an approved budget and
17 credit counselor at least thirty days prior to the
18 first day of a scheduled dispute resolution session;
- 19 (5) Contact information for all approved housing
20 counselors;
- 21 (6) Contact information for all approved budget and credit



- 1 counselors;
- 2 (7) A statement that the mortgagor electing to participate
- 3 in the mortgage foreclosure dispute resolution program
- 4 shall provide a certification under penalty of perjury
- 5 to the department that the mortgagor is an owner-
- 6 occupant of the subject property, including supporting
- 7 documentation;
- 8 (8) A general description of the information that an
- 9 owner-occupant electing to participate in the mortgage
- 10 foreclosure dispute resolution program is required to
- 11 provide to participate in the program as described
- 12 under section 667-80(c)(2);
- 13 (9) A statement that the owner-occupant shall elect to
- 14 participate in the mortgage foreclosure dispute
- 15 resolution program pursuant to this part no later than
- 16 thirty days after the department's mailing of the
- 17 ~~notice~~ notification required under section 667-77 or
- 18 the right shall be waived."

19 SECTION 7. Section 667-76, Hawaii Revised Statutes, is
 20 amended by amending subsection (a) to read as follows:

21 "(a) Within three days after a mortgagee serves [a]:



1 (1) A foreclosure notice on an owner-occupant pursuant to
2 section 667-22[7]; or

3 (2) Notice of dispute resolution availability on an owner-
4 occupant pursuant to section 667-75(b);

5 the mortgagee shall file the [~~foreclosure~~] notice with the
6 department and pay a filing fee of \$250, which shall be
7 deposited into the mortgage foreclosure dispute resolution
8 special fund established under section 667-86."

9 SECTION 8. Section 667-77, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§667-77 Notification to mortgagor by department. Within
12 ten days after the mortgagee's filing of a notice [~~of default~~
13 ~~and intention to foreclose~~] with the department[7] pursuant to
14 section 667-76(a), the department shall mail a written
15 notification by registered or certified mail to the mortgagor
16 that [a] the notice [~~of default and intention to foreclose~~] has
17 been filed with the department. The notification shall inform
18 the mortgagor of an owner-occupant's right to elect to
19 participate in the mortgage foreclosure dispute resolution
20 program and shall include:

21 (1) Information about the mortgage foreclosure dispute



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



- 1 resolution program;
- 2 (5) A description of the information required under
- 3 section 667-80(c)(2) that the owner-occupant shall
- 4 provide to the mortgagee and the neutral assigned to
- 5 the dispute resolution;
- 6 (6) A statement that the owner-occupant shall consult with
- 7 an approved housing counselor or approved budget and
- 8 credit counselor at least thirty days prior to the
- 9 first day of a scheduled dispute resolution session;
- 10 (7) Contact information for all approved housing
- 11 counselors;
- 12 (8) Contact information for all approved budget and credit
- 13 counselors; and
- 14 (9) Contact information for the department.

15 The notification shall be mailed to the subject property address
16 and any other addresses for the mortgagor as provided in the
17 mortgagee's notice of dispute resolution availability under
18 section 667-75 and, if applicable, the foreclosure notice under
19 section 667-22(a)."

20 SECTION 9. Section 667-78, Hawaii Revised Statutes, is
21 amended by amending subsections (b) and (c) to read as follows:



1 "(b) If the completed form and fee are not received within
2 the required time period, the owner-occupant shall be deemed to
3 have waived any right to participate in the mortgage foreclosure
4 dispute resolution program with respect to the subject property
5 and the foreclosure notice filed with the department[-] pursuant
6 to section 667-76(a)(1) or (2).

7 (c) If the owner-occupant does not elect to participate in
8 dispute resolution pursuant to this part, the department shall
9 notify the mortgagee within ten days of receiving an election
10 form indicating nonelection or the termination of the thirty-day
11 time period for election. After receiving the department's
12 notification, the mortgagee may proceed with [the]:

13 (1) The nonjudicial foreclosure process according to the
14 process provided in part II [~~of this chapter.~~]; or

15 (2) Filing a foreclosure action under part IA,
16 as applicable."

17 SECTION 10. Section 667-79, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) [The] For nonjudicial foreclosures, written
20 notification of a case opening under this section shall operate



1 as a stay of the foreclosure proceeding in accordance with
2 section 667-83 and may be recorded."

3 SECTION 11. Section 667-80, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The parties shall comply with all information
6 requests from the department or neutral. No less than fifteen
7 days prior to the first day of the scheduled dispute resolution
8 session:

9 (1) The mortgagee shall provide to the department and the
10 mortgagor:

11 (A) A copy of the promissory note, signed by the
12 mortgagor, including any endorsements, allonges,
13 amendments, or riders to the note evidencing the
14 mortgage debt;

15 (B) A copy of the mortgage document and any
16 amendments, riders, or other documentation
17 evidencing the mortgagee's right of [~~nonjudicial~~]
18 foreclosure and interest in the property
19 including any interest as a successor or
20 assignee; and

21 (C) Financial records and correspondence that confirm



1 the mortgage loan is in default.

2 (2) The owner-occupant shall provide to the department and
3 the mortgagee:

4 (A) Documentation showing income qualification for a
5 loan modification, including any copies of pay
6 stubs, W-2 forms, social security or disability
7 income, retirement income, child support income,
8 or any other income that the owner-occupant deems
9 relevant to the owner-occupant's financial
10 ability to repay the mortgage;

11 (B) Any records or correspondence available which may
12 dispute that the mortgage loan is in default;

13 (C) Any records or correspondence available
14 evidencing a loan modification or amendment;

15 (D) Any records or correspondence available that
16 indicate the parties are currently engaged in
17 bona fide negotiations to modify the loan or
18 negotiate a settlement of the delinquency;

19 (E) Names and contact information for approved
20 housing counselors, approved budget and credit
21 counselors, or representatives of the mortgagee,



1 with whom the owner-occupant may have or is
 2 currently working with to address the
 3 delinquency; and

4 (F) Verification of counseling by an approved housing
 5 counselor or approved budget and credit
 6 counselor."

7 SECTION 12. Section 667-81, Hawaii Revised Statutes, is
 8 amended by amending subsections (b), (c), and (d) to read as
 9 follows:

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 record
 15 the report. Upon recording of the report pursuant to this
 16 subsection [~~the~~]:

17 (1) The nonjudicial foreclosure process shall resume along
 18 the timeline as it existed on the date before the
 19 mortgagor elected dispute resolution, and may proceed
 20 as otherwise provided by law [~~or~~]; or



1 (2) The mortgagee may proceed with filing a foreclosure
2 action under part IA,
3 as applicable. The mortgagee shall notify the mortgagor of the
4 recording date and document number of this report and, in the
5 case of nonjudicial foreclosure, the deadline date to cure
6 default in an amended foreclosure notice. Nothing in this
7 subsection shall be construed to require the neutral to wait the
8 full sixty days allotted for dispute resolution to determine
9 that the parties were unable to reach an agreement and file a
10 report.

11 (c) If the parties have complied with the requirements of
12 this part and have reached an agreement, the agreement shall be
13 memorialized in writing and signed by the parties or their
14 authorized representatives. The parties shall be responsible
15 for drafting any agreement reached and enforcing the agreement.
16 The agreement shall be a contract between the parties and shall
17 be enforceable in a private contract action in a court of
18 appropriate jurisdiction in the event of breach by either party.
19 If the agreement allows for foreclosure or other transfer of the
20 subject property, the stay of the foreclosure under section
21 667-83, where applicable, shall be released upon the recordation



1 of the neutral's closing report. Thereafter, the office of the
2 assistant registrar of the land court or bureau of conveyances
3 may record a notice of sale or other conveyance document, as
4 appropriate.

5 (d) If the parties to a dispute resolution process reach
6 an agreement [~~which~~] that resolves the matters at issue in the
7 dispute resolution before the first day of the scheduled dispute
8 resolution session scheduled pursuant to this section, the
9 parties shall notify the neutral by that date. The neutral
10 shall thereafter issue a closing report that the parties have
11 reached an agreement prior to the commencement of a dispute
12 resolution session. If the agreement provides for foreclosure,
13 the parties shall memorialize the agreement in writing, which
14 shall be signed by both parties. The parties may record the
15 report. If the agreement authorizes foreclosure, the stay of
16 the foreclosure under section 667-83, where applicable, shall be
17 released upon the recordation of the report. Thereafter, the
18 land court or bureau of conveyances may record a notice of sale
19 or other conveyance document, as appropriate. No fees shall be
20 refunded if the parties come to an agreement prior to a dispute
21 resolution session conducted pursuant to this part."



1 SECTION 13. Section 667-82, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) If the neutral determines that the noncompliance was
4 unjustified as a result of circumstances within a party's
5 control, sanctions may be imposed on the noncompliant party as
6 follows:

7 (1) Sanctions against a mortgagee for unjustified
8 noncompliance with the program shall include [a]:
9 (A) A stay of the foreclosure under section 667-83;
10 or
11 (B) Continuance of the bar against filing a
12 foreclosure action under part IA for the subject
13 property, pursuant to section 677-74(2), until
14 the requirements of this part are met,
15 as applicable, and a fine payable to the owner-
16 occupant not to exceed \$1,500; or

17 (2) Sanctions against an owner-occupant for unjustified
18 noncompliance with the program shall include [a]:
19 (A) A removal of the stay of the foreclosure pursuant
20 to section 667-83(b); or



1 (B) Authorization for the mortgagee to proceed with
2 filing a foreclosure action under part IA,
3 as applicable, and a fine payable to the mortgagee not
4 to exceed \$1,500."

5 SECTION 14. Section 667-83, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) ~~[The]~~ In the case of nonjudicial foreclosure, written
8 notification of a case opening under section 667-79 shall
9 operate as a stay of the foreclosure proceeding and may be
10 recorded; provided that:

11 (1) The written notification shall not act as a stay on a
12 foreclosure proceeding by an association; ~~[and]~~

13 (2) The written notification shall not act as a stay on a
14 foreclosure proceeding for the purpose of the date by
15 which the default must be cured pursuant to section
16 667-22 (a) (6) ~~[-]~~; and

17 (3) In any proceeding brought by an owner-occupant to
18 enforce the stay under this section, the court shall
19 award the owner-occupant reasonable attorneys' fees
20 together with the costs of the suit if the owner-
21 occupant prevails."



1 SECTION 15. (a) This Act shall not apply to mortgagees
2 who have filed a judicial foreclosure action under part IA of
3 chapter 667, Hawaii Revised Statutes, at any time prior to
4 December 1, 2015, except as provided in this section.

5 (b) The department of commerce and consumer affairs shall
6 implement the amendments made to the mortgage foreclosure
7 dispute resolution program pursuant to this Act no later than
8 December 1, 2015, whereupon:

9 (1) All judicial foreclosure actions filed under part IA
10 of chapter 667, Hawaii Revised Statutes, prior to
11 December 1, 2015, for "residential property" occupied
12 by "owner-occupants", as those terms are defined in
13 section 667-1, Hawaii Revised Statutes, as amended by
14 this Act, and for which no court hearing has been
15 conducted as of December 1, 2015, nor will be
16 conducted for at least the _____ days immediately
17 following that date, shall be immediately suspended;
18 and

19 (2) All mortgagees who filed a judicial foreclosure action
20 described in paragraph (1) shall comply with the
21 requirements of part V of chapter 667, Hawaii Revised



1 Statutes, as amended by this Act, in the same manner
2 and under the same conditions, to the extent feasible,
3 as prescribed by that part for a mortgagee seeking to
4 file a judicial foreclosure action.

5 (c) A judicial foreclosure action shall remain suspended
6 under subsection (b) until the satisfaction of any requirement
7 or condition under part V of chapter 667, Hawaii Revised
8 Statutes, as amended by this Act, entitling a mortgagee to file
9 a judicial foreclosure action, including as provided under
10 sections 667-78(c), 667-81, and 667-82(b), Hawaii Revised
11 Statutes, as amended by this Act.

12 (d) All mortgagees to whom this section applies shall be
13 subject to all penalties for noncompliance with part V of
14 chapter 667, Hawaii Revised Statutes, as amended by this Act,
15 including as provided under sections 667-60(a) and 667-82(b),
16 Hawaii Revised Statutes, as amended by this Act.

17 SECTION 16. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2015-2016 to be
20 deposited into the mortgage foreclosure dispute resolution



1 special fund established pursuant to section 667-86, Hawaii
2 Revised Statutes.

3 SECTION 17. There is appropriated out of the mortgage
4 foreclosure dispute resolution special fund the sum of
5 \$ or so much thereof as may be necessary for fiscal
6 year 2015-2016 and the same sum or so much thereof as may be
7 necessary for fiscal year 2016-2017 for all expenses of the
8 mortgage foreclosure dispute resolution program and to carry out
9 the purposes of this Act, including the hiring of one full-time
10 program specialist exempt from chapter 76, Hawaii Revised
11 Statutes, and one full-time office assistant exempt from chapter
12 76, Hawaii Revised Statutes, within the department of commerce
13 and consumer affairs office of consumer protection.

14 The sums appropriated shall be expended by the department
15 of commerce and consumer affairs for the purposes of this Act.

16 SECTION 18. Except as provided in section 15 of this Act,
17 this Act does not affect rights and duties that matured,
18 penalties that were incurred, and proceedings that were begun
19 before its effective date.

20 SECTION 19. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 20. This Act shall take effect on December 1,
2 2015; provided that sections 16 and 17 shall take effect on
3 July 1, 2015.

4

INTRODUCED BY: 



JAN 22 2015



H.B. NO. 132

Report Title:

Mortgage Foreclosures; Judicial Foreclosure; Mandatory Dispute Resolution; Mediation; Appropriation

Description:

Expands the application of mandatory mortgage foreclosure dispute resolution by requiring mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or mitigate damages from foreclosure prior to filing a judicial foreclosure action for property that has been the mortgagor's primary residence for a specified period. Applies the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this measure and pending an initial court hearing. Appropriates funds. Effective December 1, 2015; appropriations effective July 1, 2015.

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

