

**ANNUAL REPORT TO THE LEGISLATURE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
REGULAR SESSION OF 2013**

**In Accordance with Act 48,
Session Laws of Hawaii, 2011, Section 41**

**Prepared by the
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF ADMINISTRATIVE HEARINGS
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM**

STATE OF HAWAII

December 2012

TABLE OF CONTENTS

<u>Executive Summary</u>	<u>ii</u>
<u>Act 48, Session Laws of Hawaii, 2011</u>	<u>1</u>
<u>Act 182, Session Laws of Hawaii, 2012</u>	<u>1</u>
<u>Operations</u>	<u>2</u>
Process and Documentation	2
Mortgage Foreclosure Dispute Resolution Program Filing Website.....	4
Neutral Service Provider Readiness	4
Neutral Training Upkeep.....	5
<u>Outcomes.....</u>	<u>5</u>
<u>Recommendations for further legislation necessary for the efficient operation of the MFDR Program.....</u>	<u>6</u>
<u>Appendix A: MFDR Program documents and notices</u>	<u>7</u>
<u>Appendix B: MFDR filing website screenshots</u>	<u>255</u>
<u>Appendix C: FNMA (“Fannie Mae”) & FHLMC (“Freddie Mac”) directives regarding nonjudicial foreclosures.....</u>	<u>29</u>

**SECOND ANNUAL REPORT OF THE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
TO THE LEGISLATURE FOR
THE REGULAR SESSION OF 2013**

Executive Summary

Section 41 of Act 48 (SLH 2011) requires the Department of Commerce and Consumer Affairs (“DCCA”) to report to the regular sessions of the 2012 and 2013 legislature on the operations and outcomes of the Mortgage Foreclosure Dispute Resolution Program (“MFDR”), including recommendations for further legislation if necessary for the efficient operation of the program.

In the year since DCCA last reported to the Legislature, MFDR worked with the Mortgage Foreclosure Task Force (“MFTF”) to provide input on legislative proposals that would enhance the efficacy of MFDR. The MFDR Program has also maintained readiness to accept cases despite reluctance on the part of mortgagees to participate in nonjudicial foreclosure under Haw. Rev. Stat. §667-22 (“Part II”).

The MFDR Program continues to be a clearinghouse for distressed mortgagors in search of information to address their situations. Consumers are directed toward seeking counseling, the Joint State-Federal Mortgage Servicing Settlement (“the Settlement”), or the Office of Consumer Protection, depending on whether they are in pre-foreclosure, are possibly eligible for consideration under the Settlement, or have been a victim of mortgage rescue fraud, respectively.

Through the 2012 Legislative Session, the MFDR Program assisted the MFTF and DCCA in monitoring H.B. 1875 (Act 182, SLH 2012) and in making recommendations relating to MFDR. Act 182 was the result of deliberations among members appointed to the MFTF from a broad spectrum of foreclosure-related areas of expertise including title insurance, housing counseling, lending, consumer-protection, and condominium and homeowner associations. Among the changes recommended by the MFTF, and adopted by the 2012 Legislature were revisions to the timing of deadlines within the MFDR Program to make them more achievable, allowing owner-occupants to elect participation online via the MFDR Program’s website, further clarifying the condominium and homeowner exemption from participation in MFDR, removing the neutral witness requirement for the signing of the Settlement Document to allow for more expeditious resolution, and narrowing the categories of conduct that would trigger a possible unfair or deceptive practice claim. This was done to address lender and title insurer concerns over the alleged broad application of unfair and deceptive act or practices in Hawaii Revised Statutes §667-60 as initially drafted in Act 48, Session Laws of Hawaii 2011 (“Act 48”).

To maintain readiness when lenders start using the HRS Chapter 667 Part II Power of Sale Foreclosure Process, the MFDR Program has an ongoing relationship with its Neutral Service Provider contractors, and has participated in training seminars intended to keep trained neutrals up-to-date with the current state of the law, reinforce training that took place last year, and train new neutrals recruited by the Neutral Service Providers. Neutrals trained by the MFDR Program, despite their lack of use by the MFDR Program itself have been utilized in judicial foreclosure mediations.

The MFDR Program strives to keep its website up-to-date to provide current information for distressed homeowners, and has added an Electronic Publication of Notices of Public Sale component, per the mandate in Act 182 for such a system, in an effort to mitigate the rising cost of legal publications which, although initially paid for by the foreclosing mortgagee, ultimately impact consumers as the foreclosed mortgagor. Initially, Electronic Publication was limited to nonjudicial, owner-occupant, non-association foreclosures, due to the need to meet Act 182's August 30th, 2012 deadline for availability. To meet the requirement, development of the addition was divided into two phases, of which Phase I created the basic posting and search capabilities, and Phase II added editing functions, advanced search capabilities, and back-end statistics for administrators.

A major challenge for the MFDR Program going forward is its revenue stream. Act 182 made the MFDR Program permanent by repealing its sunset date of September 30, 2014, with the expectation that the program would derive its revenues from filing fees. At the present time, however, lenders remain reluctant to participate in the MFDR program. Even with program use, given the cost of provisioning neutrals, the statute mandated filing and program fees may prove to be insufficient for the ongoing operation of the MFDR Program.

Given the recodification of HRS Chapter 667 effected by Act 182, at the moment the MFDR Program has no further recommendations for amendments to the MFDR process. As the changes were extensive, it will take some time for the full effects to be realized and understood. Over the next year the MFDR Program will continue to try and find ways to encourage utilization of the Part II process. A significant unknown factor is how, in the time that has passed since the enactment of Act 48, the foreclosure landscape has changed given the national settlement, the changing economic situation, and changes in mortgage servicing practices, and how these changes have affected homeowners' abilities to obtain workout solutions with their lenders.

**SECOND ANNUAL REPORT OF THE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
TO THE LEGISLATURE FOR
THE REGULAR SESSION OF 2013**

Act 48, Session Laws of Hawaii, 2011

Act 48, Session Laws of Hawaii 2011, established the Mortgage Foreclosure Dispute Resolution (MFDR) Program within DCCA to provide owner-occupants an opportunity to negotiate agreements that avoid foreclosure or mitigate losses in cases where foreclosure is unavoidable.

Within the context of the MFDR Program, DCCA was charged with setting up the MFDR Program, and submitting a report to the Legislature. Per Act 48, SLH 2011, DCCA sought assistance from the Center for Alternative Dispute Resolution in matters pertaining to contract procurement, performance oversight, and contracts with neutral service providers for dispute resolution services. The MFDR Program was exempted from procurement law under HRS 103D and 103F.

After the enactment of Act 48, concerns were raised, particularly from representatives of mortgagees and title insurance companies, about the effect that Act 48 would have on the ability to perform nonjudicial foreclosures due to the broad impact of the unfair or deceptive acts and practices section in Act 48 (HRS §667-60), and the consequences it would have on a mortgagee's ability to complete a foreclosure and obtain title insurance. Condominium and homeowner associations also expressed concern regarding the poor fit of definitions contained in the law to the nonjudicial process as it pertained to those organizations.

The concerns of the mortgagees and title insurers resulted in foreclosing entities, with the exception of condominium and homeowner associations, converting all of their nonjudicial foreclosures into judicial foreclosures. For condominium and homeowners associations, their concerns were mitigated by the MFDR Program accepting foreclosure notice filings from them until the law's intent was clarified by Special Hearings Officer Corinne K.A. Watanabe in response to a declaratory relief petition from Ekimoto & Morris, LLC.¹

Act 182, Session Laws of Hawaii, 2012

After the MFDR Program was established, the work of examining the effects of Act 48, and determining how to address the concerns that discouraged utilization of nonjudicial foreclosure and the MFDR Program, began. Working closely with the MFTF, and the expertise

¹ <http://hawaii.gov/dcca/oah/mfdr/MFDRP-DR-2011-1-Ekimoto-and-Morris.pdf>

available from its members, the MFDR Program drew up a short list of six recommended amendments to the program that, if the statements of lenders and title insurers were accurate, would facilitate utilization of the program. These amendments were included in the MFTF's recommended legislation that would eventually become Act 182.

After Act 182 was enacted, the MFDR Program once again prepared for the possibility that lenders would choose to utilize nonjudicial foreclosures, and the MFDR Program. Unfortunately for distressed homeowners, as well as the MFDR Program, this was not the case. Despite statements from the lending industry that the primary concerns influencing the move toward judicial foreclosure arose from the wide reach of HRS Chapter 480 within Chapter 667, and the insurability of title conveyed via nonjudicial foreclosure, the statistics speak for themselves. Since the passage of Act 182, in a continuation of the status quo post Act 48, there has not been a single non-association nonjudicial foreclosure filing.

Operations

As no nonjudicial foreclosures have been initiated by mortgagees, as evidenced by the lack of nonjudicial foreclosure filings, the MFDR Program has focused on continuing to be a resource for distressed homeowners, and has helped many of them find programs that can assist them (e.g. HUD-approved housing counselors and budget and credit counselors, the Joint State-Federal Mortgage Servicing Settlement, and Independent Foreclosure Review).

The MFDR Program remains ready to accept cases for dispute resolution, and is involved in the ongoing discussion between the various DCCA divisions involved with foreclosure issues, as well as the Department of Housing and Urban Development ("HUD"). The goal of these discussions is to find ways to make the dispute resolution process work, without rolling back hard-won consumer protections against questionable mortgage servicing practices. As substantial portion of distressed homeowners' mortgages in Hawaii are owned by the two major government-sponsored enterprises ("GSEs"), Fannie Mae and Freddie Mac, the impact of the directives and guidance of these organizations in reaction to Act 48 has had a disproportionate effect on Hawaii's mortgage foreclosures. In discussions with representatives from both Fannie Mae and Freddie Mac, DCCA has been advised that both entities continue to refuse to authorize nonjudicial foreclosure in Hawaii for its mortgages, despite the recent revisions to Chapter 667.

Process and Documentation

In most respects, the MFDR process is unchanged from that described in the 2011 report. However, during the MFDR Program's set up and implementation, technical and process issues were identified that the MFDR Program sought to address with 2012 Act 182 amendments.

Act 182 made minor changes to the MFDR process. Of these, the three most significant amendments were to change the session scheduling window for the dispute resolution session from thirty to sixty days, changing the notice of case opening from forty to seventy days as of the notice of case opening, allowing owner-occupants to elect participation via the MFDR's website, and removing the requirement that the settlement agreement be signed in the neutral's presence and attached to the neutral's report.

Changing the session scheduling window was a top priority for the MFDR Program, and at the Program's suggestion the MFTF adopted the recommendation for inclusion in the MFTF recommended legislation. The purpose of this amendment was to address a potential timing and scheduling conflict within the statute as enacted by Act 48. Under Act 48, as of the notice of case opening, an owner-occupant had to receive counseling from a Hawaii-based, HUD-certified housing counselor or US Bankruptcy Trustee approved budget and credit counselor, *at least* thirty days *before* the first dispute resolution session. Act 48 further stipulated that the MFDR Program schedule the first dispute resolution session between thirty to sixty days as of the mailing of the notice of case opening. If the MFDR Program were to have scheduled a dispute resolution session at the minimum time required as of the mailing of the notice of case opening, thirty days, then by the time the owner-occupant received the notice of case opening via the mail, they would have already missed the thirty-days-before-dispute-resolution deadline. The result would be that an owner-occupant could find themselves in noncompliance through no fault of their own.

Under Act 48 an owner-occupant was required to elect participation via a form, per HRS §667-78(a) (1), that was mailed as part of the Notice of MFDR Availability pursuant to HRS §667-77(2). In order to streamline the MFDR election process, an electronic election form was added to the MFDR website that allows owner-occupants to elect participation online, and HRS §667-78 was amended to allow use of this web form as well as the form included in the mailing pursuant to HRS §667-77(2).

The last of the amendments to the MFDR process was an amendment to not require the signing of the Settlement Agreement (the "Agreement") in the neutral's presence or require its attachment to the neutral's closing report (with the exception of when an agreement is reached between mortgagee and mortgagor, prior to the first dispute resolution session, that includes foreclosure). As the parties are responsible for drafting the Agreement, and any Agreement not directly conceding to the foreclosure would by necessity be complex and require extensive review and editing, the requirement that the Agreement be signed in the presence of the neutral would lead to a large number of second sessions which would extend the MFDR process unnecessarily and raise costs for the Program overall. This amendment also removed the requirement that the Agreement be attached to the neutral's closing report, as doing so would result in the MFDR Program coming into possession of a large amount of privileged financial information, which would in turn result in that information becoming part of the public record.

These amendments necessitated updating various MFDR forms and mailings to reflect the changes made by Act 182. Please see Appendix A for the updated versions.

Mortgage Foreclosure Dispute Resolution Program Filing Website

The MFDR Program's filing website, pertaining specifically to the MFDR process, has not undergone any changes since the MFDR Program last reported to the Legislature.

However, Act 182 added an electronic publication for notices of public sale section, and additions were made to the MFDR website to accommodate this requirement. In implementing the electronic publication option, the DCCA looked at the practices followed for legal notice publication in newspapers, and collaborated with title insurers to ensure that the resulting system would fit their requirements for title insurability. The resulting system publishes a notice of public sale to the web that is substantially similar to those published in newspapers. Besides the basic legal requirements contained within HRS §667-27, the DCCA also added fields for where the one required publication in a newspaper would take place, the number for the recorded mortgage or lien document, and time/date stamps that display with the notice so as to leave no question as to when the notice was created and published. To meet the Act 182 deadline for availability of August 30, 2012, the project was split into two phases. Phase I created basic functionality, with access for nonjudicial, owner-occupant, non-association foreclosures. Phase II adds advanced search capabilities, notice editing and tracking, and administrative features such as statistics and archiving. The system is designed to be a reliable public record, and as such no publication can ever be deleted from the database. Instead, publications not conforming to statute can be archived by DCCA staff and removed from the public view, but cannot be deleted and will be available in the event an audit of the system is undertaken.

Screenshots of both the basic filing website, as well as the electronic publication component, can be found in Appendix B.

Neutral Service Provider Readiness

The MFDR Program's Neutral Service Providers ("NSPs") have maintained readiness by diversifying their training programs to prepare their neutrals to also serve as mediators for court-ordered mediations. While the structure for judicial foreclosure mediations is looser in terms of the number of allowed sessions, no prerequisite for document exchange or housing counseling, and lack of explicit sanctions for uncooperative parties, as the goals are essentially the same, the training for being a MFDR neutral applies well to judicial foreclosure mediations. Further, as neutrals and the NSPs were trained using MFDR Program standards, certain practices such as the importance of homeowners receiving housing counseling prior to dispute resolution, have found

acceptance within the group of mediators who do judicial mediations, as well as lenders who have participated in such mediations.

Overall, Hawaii is currently able to handle more foreclosure-related dispute resolutions (under MFDR) and mediations (for foreclosure by action) than there are opportunities to do so. Currently there are twenty-seven (27) neutrals trained for Oahu, Maui, and Kauai, and 12 neutrals trained for the island of Hawaii. Demand has been weak due to the lack of nonjudicial foreclosure cases and the slow pace of judicial foreclosures.

Neutral Training Upkeep

The NSPs have both held training/retraining sessions this year relating to foreclosures both to maintain the training of those mediators trained to be neutrals last year, as well as to train new neutrals/mediators. The curriculum has not changed significantly from 2011. The MFDR Program participated in a two-day training session in Honolulu where neutrals from all of the NSPs were present, and gave a presentation focused on the neutral's role within dispute resolution and what changes had occurred to the MFDR Program because of Act 182. Additionally, the MFDR Program Specialist was available for questions from neutrals for both days of the training seminar. The presentation was well received by seminar participants as well as representatives of the NSPs.

Outcomes

To date there have been no cases as there have been zero (0) nonjudicial foreclosure filings that were not related to association lien foreclosures. Thus, there have been no direct outcomes.

As of November 15, 2012, the program has received one-hundred (151) consumer calls, which for reporting purposes have been sorted into the categories below:

Category	#
Information Request	120 calls
Consumer Protection	5 calls
Judicial Conversion	1 call
Wrong Number	3 calls
Mortgage Foreclosure Task Force	3 calls
Electronic Publication: Notice of Public Sale	3 calls
Joint State-Federal Mortgage Servicing Settlement	9 calls
Hang-up	7 calls

Consumer protection calls were forwarded to the appropriate DCCA division, after determining that there was a possible consumer protection issue, typically related to loan modification scams. Judicial conversion questions were directed to the Judiciary's website at:

http://www.courts.state.hi.us/self-help/foreclosure/foreclosure_conversion.html. MFTF and Electronic Publication inquiries were answered by the MFDR Program Specialist. Settlement inquiries were directed to the Attorney General's office.

Despite the lack of nonjudicial foreclosure filings resulting from the passage of Act 48, SLH 2011, there have been positive indirect outcomes from the MFDR Program. The stoppage of nonjudicial foreclosures has given Hawaii families the opportunity to reassess their situations, seek counseling, and hopefully, have enough breathing space with the conversion of nonjudicial foreclosure to judicial foreclosures by lenders, to muster the resources needed to stay in their homes. The training of neutrals for the MFDR Program has significantly increased the number of alternative dispute resolution professionals and volunteers available in the State, which may help to mitigate the current foreclosure situation regardless of whether or not those disputes are resolved in the MFDR Program itself.

Recommendations for further legislation necessary for the efficient operation of the MFDR Program

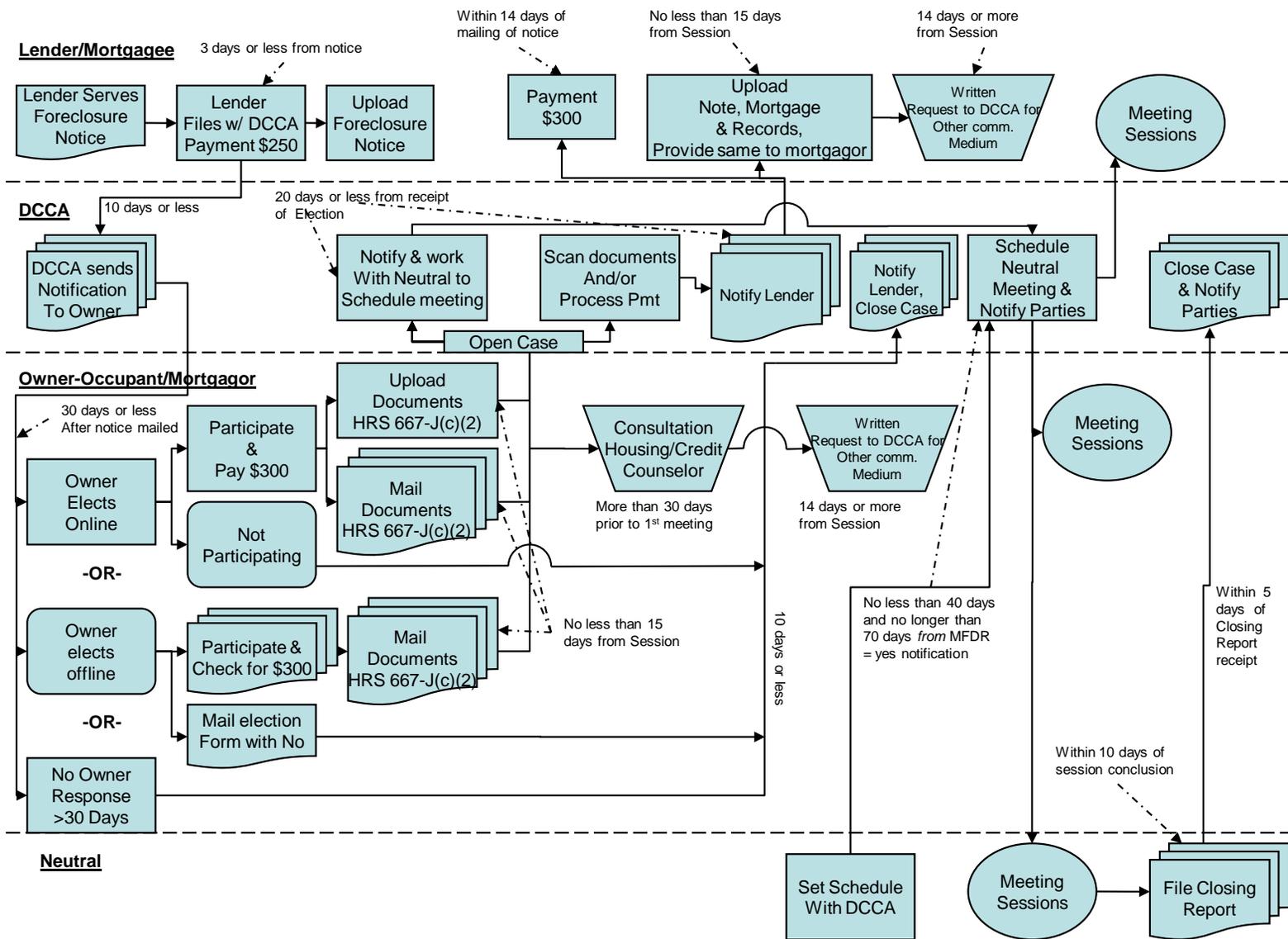
Pursuant to Act 48, SLH 2011, Section 41, the MFDR Program has been directed to submit "recommendations for further legislation if necessary for the efficient operation of the program."

Given the recodification of HRS Chapter 667 effected by Act 182, at the moment the MFDR Program has no further recommendations for amendments to the MFDR process. As the changes were extensive, it will take some time for the full effects to be realized and understood. Over the next year the MFDR Program will continue to try and find ways to encourage utilization of the Part II process. A significant unknown factor is how, in the time that has passed since the enactment of Act 48, the foreclosure landscape has changed given the national settlement, the changing economic situation, and changes in mortgage servicing practices, and how these changes have affected homeowners' abilities to obtain workout solutions with their lenders.

APPENDIX A: MFDR Program documents and notices

Index:

MFDR Program Flow Chart 8
Notice of Mortgage Foreclosure Dispute Resolution Program Eligibility 9
Information Sheet..... 11
Mortgage Foreclosure Dispute Resolution Program Election Form..... 13
Certification of Owner-Occupant Status..... 144
Statement Regarding Counseling Requirements 155
List of Approved Housing Counselors (from US HUD) 166
List of Approved Budget and Credit Counselors (from US Trustee Program, DoJ)..... 177
Notice of Case Opening (mortgagor)..... 188
Notice of Case Opening (mortgagee) 200
Notice of Nonelection 222
Mortgage Foreclosure Dispute Resolution Program Case Closing Report 233



MFDR Program Flow Chart

«First» «Last»
«Property_Address_1»
«City_Property», HI «Zip_Property»

«Address_1»
«City_Alternate», «State_Alternate» «Zip_Alternate»

Case Reference Number: «Case_Ref»

Notice of Mortgage Foreclosure Dispute Resolution Program Eligibility

Dear «First» «Last»,

On «Date_Rcvd», the Department of Commerce and Consumer Affairs, Office of Administrative Hearings, received a Notice of Default and Intention to Foreclose regarding Choose an item. «TMK_or_TCT» from «Mortgagee».

In accordance with HRS §667-77, the Department of Commerce and Consumer Affairs hereby gives notice to you that, as an owner-occupant of the property at «Address_1», you have the right to elect to participate in the Mortgage Foreclosure Dispute Resolution (“MFDR”) Program. The MFDR Program provides an opportunity for owner-occupants of residential property in nonjudicial foreclosure to meet directly with their lenders (or their lender’s representative) to modify their loans, work out a payment plan, or negotiate mitigation in situations where other options are unavailable.

Enclosed with this notice are the following documents pertaining to the MFDR Program:

- MFDR Program Information Sheet
- MFDR Program Election Form
- Certification of Owner-Occupant Status
- List of Approved Housing/Credit Counselors
- Statement regarding Counseling Requirements

In order to elect to participate in the MFDR Program you *must* submit the MFDR Program Election Form, Certification of Owner-Occupant Status, copies of the documents supporting your Certification of Owner-Occupant Status, and your fee within thirty (30) days as of this notice’s mailing date. If you submit original documents, you must include a self-addressed, postage-paid envelope so your original documents can be mailed back to you. Do not use metered postage on your return envelopes. Any original stubs or receipts must be affixed to an 8.5x11 sheet of letter-sized paper using clear, cellophane tape. You may also elect online to participate in the MFDR Program, pay your program fees, and submit scans of your Certification of Owner-Occupant Status and supporting documentation (PDF’s *only* please) at our website

at URL: <https://mfd.ehawaii.gov> by logging in with the Case Reference Number at the top of this Notice, and your surname.

Mortgage Foreclosure Dispute Resolution Program

Information Sheet

The Mortgage Foreclosure Dispute Resolution (MFDR) program provides an opportunity for owner-occupants of residential property in non-judicial foreclosure to meet directly with their lenders to modify their loans or to work out a payment plan within three months. The program is established and administered by the Department of Commerce and Consumer Affairs – Office of Administrative Hearings (DCCA-OAH) with assistance from the Judiciary.

How can I participate in the MFDR program?

If you have received a notice from the DCCA of your lender's Notice of Default and Intent to Foreclose, and you have been resident on your property for 200 consecutive days or more, you are eligible for MFDR.

How does the program work?

- Lenders may begin filing notices of non-judicial foreclosure with DCCA once the program begins.
- Lenders must file a notice of non-judicial foreclosure with DCCA with a filing fee of \$250 which will go to a special fund for the MFDR program.
- Upon receiving the notice, DCCA-OAH will send a notice to the owner-occupant regarding the opportunity to participate in dispute resolution, information about the program, a MFDR participation form, and instructions and contact information for the program.
- The owner-occupant has up to 30 days from the mailing of DCCA's notice to submit the MFDR participation form and pay a \$300 nonrefundable program fee. If the owner-occupant chooses dispute resolution, the lender must also pay a \$300 program fee.
- If the owner-occupant does not submit the form, or chooses not to participate, then the foreclosure process continues to move forward.
- Upon receiving the owner-occupant's MFDR participation form, DCCA will open a dispute resolution case and notify the parties within 20 days of the date, time, and location of the dispute resolution session. The session will be scheduled between 40 and 70 days from this notification date, unless the parties and dispute resolution neutral agree to a different date. In addition, the notice will include information about the dispute resolution process (i.e., rules, requirements, consequences, and penalties for noncompliance).
- The foreclosure process is on hold from the time DCCA sends out written notice of the opening of a dispute resolution case.
- If the parties are able to reach an agreement during the dispute resolution session, the agreement reached shall be enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party.

- If the parties are unable to reach an agreement during the dispute resolution session, the foreclosure continues to move forward.
- A lender who fails to comply with the program may not move forward with non-judicial foreclosure. Additional penalties for noncompliance include fines of up to \$1,500.

Who can assist me in seeing if I qualify for loan modification?

It is important for homeowners thinking about loan modification to seek assistance from approved credit counseling agencies.

Please refer to the List of Approved Credit and Housing Counselors document included in this mailing.

What happens to the non-judicial foreclosure I was facing?

If you elect to participate, the non-judicial foreclosure process is on hold until the dispute resolution process is completed.

Can I choose to go through the judicial foreclosure process?

Yes, however, once you participate in the MFDR program, you cannot convert to judicial foreclosure. Therefore, a decision about which process is best for you must be made before the MFDR participation form is submitted.

Required Information for the MFDR Program

If you elect to participate in the MFDR Program the following items will be needed:

- Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the mortgage;
- Any records or correspondence available which may dispute that the mortgage loan is in default;
- Any records or correspondence available evidencing a loan modification or amendment;
- Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
- Names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the delinquency; and
- Verification of counseling by an approved housing counselor or approved budget and credit counselor.

Mortgage Foreclosure Dispute Resolution Program Election Form
Department of Commerce and Consumer Affairs, Office of Administrative Hearings

I, _____, hereby:
First Last

Elect to participate in the Department of Commerce and Consumer Affairs Mortgage Foreclosure Dispute Resolution Program.

Waive (choose not to) participation in the Department of Commerce and Consumer Affairs Mortgage Foreclosure Dispute Resolution Program.

If you elect to participate in the Mortgage Foreclosure Dispute Resolution Program (MFDR), this form **must** be submitted within thirty (30) days from the date of mailing of the Department's official notification that you are eligible for the MFDR Program, along with a program fee of \$300, your Certification of Owner Occupant Status (this is a separate form that you received with your notification package), and supporting documentation. You may waive participation by mailing this form to the address below, with no additional documents or payments required.

*If you choose not to participate, *OR* If your completed election form, fees, and documentation, are not received within **thirty (30) days** from the date of mailing of the Department's official notice, you will have waived any right to participate in the Mortgage Foreclosure Dispute Resolution Program with respect to the property indicated on the Department's official notice, at which time the nonjudicial foreclosure process according to the process provided in part I or part II of HRS 667, initiated by the lender/mortgagee, may proceed.*

Please mail your response (along with your Certification of Owner-Occupant Status, Supporting Documentation, and Fee if you are Electing to Participate) to:

Office of Administrative Hearings, MFDR
King Kalakaua Building
335 Merchant Street, Suite 100
Honolulu, HI 96813

Use only certified mail, return service requested, and do NOT mail cash. (check, cashier's check, or money orders only)

Signature

Date

For DCCA-OAH use only, **do not write here:**

Date Received: _____ Processed by: _____ Fee Rcvd Supporting Docs

Statement Regarding Counseling Requirements

If you choose to participate in the Mortgage Foreclosure Dispute Resolution (MFDR) Program you **must** consult with an approved budget and credit counselor, or housing counselor *at least* thirty (30) days prior to the first day of your scheduled Dispute Resolution session. As the session will be scheduled as soon as possible from receipt of your election form, it is highly recommended that if you have not already seen a counselor, or set up an appointment with one, that you do so **immediately** or risk being unable to fulfill your obligations under the MFDR Program, as a Dispute Resolution Session can be scheduled as early as forty (40) days from receipt of your election form.

List of Approved Housing Counselors (from US HUD)

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=HI>

LEGAL AID SOCIETY OF HAWAII

Phone: 800-499-4302 ← For all offices
Toll-free: 800-499-4302 ← For all offices

Multiple Locations:

305 Wailuku Dr
Hilo, Hawaii 96720-2448

Fax: 808-969-3983

*

924 Bethel Street
Honolulu, Hawaii 96813

Fax: 808-527-8088

*

47-200 Waihee Rd Ste 104
Kaneohe, Hawaii 96744-4947

Fax: 808-239-3968

*

1923 Ala Malama St
Kaunakakai, Hawaii 96748

Fax: 808-553-5809

*

4334 Rice St #204A
Lihue, Hawaii 96766

Fax: 808-246-8824

*

85-670 Farrington Hwy Ste A
Waianae, Hawaii 96792-2354

Fax: 808-696-5809
next column →

2287 Main St
Wailuku, Hawaii 96793-1655

Fax: 808-244-5856

Website: www.legalaidhawaii.org/

HAWAII HOMEOWNERSHIP CENTER

1259 Aala Street, #201
Honolulu, Hawaii 96817

Phone: 808-523-9500

Toll-free: 877-523-9503

Fax: 808-523-9502

E-mail: info@hihomeownership.org

Website: www.hihomeownership.org

HAWAIIAN COMMUNITY ASSETS, INC

1050 Queen St. # 201
Honolulu HI 96814
Honolulu, Hawaii 96814

Phone: 808-587-7886

Toll-free: 866-400-1116

Fax: 808-587-7899

E-mail: info@hawaiiancommunity.net

Website: www.hawaiiancommunity.net/

SELF-HELP HOUSING CORPORATION OF HAWAII

1427 Dillingham Blvd
Suite 305
Honolulu, Hawaii 96817-0000

Phone: 808-842-7111

Fax: 808-842-7896

E-mail: selfhelphawaii@gmail.com

HALE MAHAOLU HOMEOWNERSHIP/HOUSING COUNSELING

200 Hina Avenue
Kahului, Hawaii 96732-1821

Phone: 808-242-4377

Fax: 808-242-4850

E-mail: mtanji@halemahaolu.org

Website: www.halemahaolu.org

List of Approved Budget and Credit Counselors (from US Trustee Program, DoJ)

Hawaii-Based Only

http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm

Consumer Credit Counseling Service of Hawaii

1164 Bishop Street
Suite 1614
Honolulu, HI 96813
808-532-3225

Delivery Method: Phone, In-Person

800-801-5999

Island of Hawaii:

Consumer Credit Counseling Service of Hawaii
632 Kinoole Street
Hilo , HI 96720
800-801-5999

Oahu:

CCCS of Hawaii
1164 Bishop Suite 1614
Honolulu , HI 96813
808-532-3225

Maui:

CCCS of Hawaii
95 Mahalani Suite 6
Wailuku , HI 96793
800-801-5999

Click here to enter a date.

«First» «Last»
«Property_Address_1»
«Property_Address_2»
«City_Property», HI «Zip_Property»

«Address_1»
«Address_2»
«City_Alternate», «State_Alternate» «Zip_Alternate»

Case Reference no. : «Case_Ref»

Re: Choose an item. «TMK_or_TCT», Mortgage Foreclosure Dispute Resolution

Notice of Case Opening

«First» «Last»,

On «Date_Rcvd», the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs (DCCA-OAH) received your form electing to participate in the Mortgage Foreclosure Dispute Resolution (MFDR) Program regarding Choose an item. «TMK_or_TCT». DCCA-OAH has opened a case, numbered «Case_Number», and scheduled a dispute resolution session.

Your Dispute Resolution Session is scheduled for:

«Date_of_DR_1st_Session», at «Time_of_DR_1st»

at

«DR_Site»

The Mortgage Foreclosure Dispute Resolution Program was established to provide an owner-occupant an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

In order to facilitate Dispute Resolution, the following documentation pertaining to the foreclosure shall be provided by you, per HRS §667-80(c)(2):

- a) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the mortgage;
- b) Any records or correspondence available which may dispute that the mortgage loan is in default;
- c) Any records or correspondence available evidencing a loan modification or amendment;
- d) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
- e) Names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the delinquency; and

- f) Verification of counseling by an approved housing counselor or approved budget and credit counselor. (note: you must receive counseling no later than thirty(30) days before the date of the Dispute Resolution Session)

You have **fifteen (15) days** prior to the first scheduled Dispute Resolution Session on «Date_of__DR_1st_Session» to submit these documents to the DCCA, Office of Administrative Hearings. **DO NOT SUBMIT ORIGINALS**. All submitted documents will be destroyed after scanning.

You may submit your documents and program fees by mailing them to:

Department of Commerce and Consumer Affairs
Office of Administrative Hearings, MFDR
335 Merchant Street, Suite 100
Honolulu, HI 98613

-OR-

Via our filing website at <https://mfdre.hawaii.gov> ,
using your case reference number and surname to log in.

IMPORTANT: You *also* have a duty to send copies of the above documents to your lender/mortgagee, per HRS §667-80(c)(2). The MFDR Program **will not** send these documents to your lender/mortgagee for you!

On the date of Dispute Resolution Session, please bring copies of all submitted documents with you.

Failure to comply with the requirements of the MFDR Program may result in a finding of unjustified non-compliance. Non-compliance can consist of:

- a) Failure to provide the required information or documents; or
- b) Refusal to cooperate or participate in dispute resolution.

In the event of unjustified noncompliance sanctions shall include removal of the stay of the foreclosure under HRS §667-82(b)(2), which will result in the foreclosure moving forward, and may include a fine payable to the lender/mortgagee not to exceed \$1,500.

Per HRS §§ 667-79(c) and 667-83, this notice shall operate as a stay of the foreclosure proceeding, and may be filed or recorded, as appropriate, at the Bureau of Conveyances or Land Court.

Click here to enter a date.

«Mortgagee»
«Address_M»
«Address_M2»
«City», «State» «Zip»

Re: Choose an item. «TMK_or_TCT»

To whom it may concern,

Notice of Case Opening

On «Date_Rcvd», the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs (DCCA-OAH) received notification from you of your Intent to Foreclose regarding Choose an item.«TMK_or_TCT». Per HRS §667-78(a), the owner-occupant has elected to participate in the MFDR Program. As such, DCCA-OAH has opened case # «Case_Number», and scheduled a dispute resolution session.

Your Dispute Resolution Session is scheduled for:

«Date_of__DR_1st_Session» at «Time_of_DR_1st»

At

«DR_Site»

Pursuant to HRS §667-79(a), the Office of Administrative Hearing hereby notifies you that the mortgagor has elected to participate in the MFDR Program. As of this notice's postal date, you have **fourteen (14) days** to remit a fee of \$300 to the DCCA.

The Mortgage Foreclosure Dispute Resolution Program was established to provide an owner-occupant an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

In order to facilitate Dispute Resolution, the following documentation pertaining to the foreclosure shall be provided by you, per HRS §667-80(c)(1):

- g) A copy of the promissory note, signed by the mortgagor, including any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt;
- h) A copy of the mortgage document and any amendments, riders, or other documentation evidencing the mortgagee's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee; and
- i) Financial records and correspondence that confirm the mortgage loan is in default.

You have **fifteen (15) days from before the first scheduled Dispute Resolution Session** on «Date_of__DR_1st_Session» to provide these documents to the DCCA, Office of Administrative Hearings, *and* the mortgagor.

Documents or program fees may be submitted through the MFDR Program portal located at:

<https://mfdr.ehawaii.gov/>

Alternatively you may submit your documents and program fees by mailing them to:

Office of Administrative Hearings, MFDR
King Kalakaua Building
335 Merchant Street, Suite 100
Honolulu, HI 98613

IMPORTANT: You *also* have a duty to send the copies of the above documents to the owner-occupant/mortgagor, per HRS §667-80(c)(1). The MFDR Program **will not** send these documents to the owner-occupant/mortgagor for you!

Failure to comply with the requirements of the MFDR Program may result in a finding of unjustified non-compliance. Non-compliance can consist of:

- a) Participation in dispute resolution without the authority to negotiate a loan modification or without access to all stages of the dispute resolution process to a person who is so authorized; or
- b) Failure to provide the required information or documents (HRS §667-80(c)(1)); or
- c) Refusal to cooperate or participate in dispute resolution; or
- d) Refusal or failure to pay program fees under HRS §667-79(b) in a timely manner.

In the event of unjustified noncompliance sanctions shall include a stay of the foreclosure under HRS §667-83(2) and may include a fine payable to the owner-occupant/mortgagor not to exceed \$1500.

Per HRS §§ 667-79(c) and 667-83, this notice shall operate as a stay of the foreclosure proceeding, and may be filed or recorded, as appropriate, at the Bureau of Conveyances or Land Court.

Click here to enter a date.

«Mortgagee»
«Contact_Person»
«Address_M»
«Address_M2»
«City», «State» «Zip»

Re: Choose an item. «TMK_or_TCT»

Notice of Nonelection

To whom it may concern,

On «Date_Rcvd», the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs received notification from you of your Notice of Default and Intent to Foreclose regarding Choose an item. «TMK_or_TCT». Upon receiving your notification the Department sent notice to the mortgagor on «DCCA_Notice_to_Mortgagor_Mailed_on» regarding their right to elect to participate in the Mortgage Foreclosure Dispute Resolution (MFDR) Program.

Pursuant to HRS §667-78(b) and/or HRS §667-78(c), the mortgagor has elected to not participate in the MFDR Program. You may now proceed with your nonjudicial foreclosure regarding Choose an item. «TMK_or_TCT» according to the process provided in Part II of HRS Chapter 667.

cc: «First» «Last»

MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM CASE CLOSING REPORT

Please indicate which Dispute Resolution Session this is:

- 1st Dispute Resolution Session 2nd Dispute Resolution Session

Name of Mortgagee: _____

Name of Mortgagor: _____

This case, # _____, having been assigned to the undersigned Neutral, the Neutral hereby reports that (check all that apply):

- 1. A dispute resolution session was held on: _____
 - a) Second session needed, scheduled for: _____
- 2. A person with authority to negotiate a loan modification on behalf of the mortgagee was present at the scheduled dispute resolution sessions.
- 3. The mortgagor was present at the scheduled dispute resolution sessions.
- 4. The mortgagee provided the Program with all the information requested by the Program.
 - a) Copy of promissory note, w/ any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt;
 - b) Copy of mortgage document and any amendments, riders, or other documentation evidencing the mortgagee's right of nonjudicial foreclosure and interest in property including any interest as a successor or assignee; and
 - c) Financial records and correspondence confirming default
- 5. The mortgagor provided the Program with all the information requested by the Program.
 - a) Documentation showing income qualification for loan modification;
 - b) Records or correspondence contesting the default;
 - c) Evidence of a loan modification or amendment;
 - d) Documentation showing parties in bona fide negotiations to modify loan or negotiate a settlement of the delinquency;
 - e) Names and contact information of counselors or representatives of mortgagee that mortgagor is working with to address delinquency; and
 - f) Verification of counseling with approved housing counselor or budget and credit counselor

Comments on items not checked above:

6. A resolution was reached in this case. A copy of the settlement document is attached.

7. A resolution was not reached in this case.

8. Unjustified noncompliance on the part of the _____
Comments on noncompliance:

DATED: _____

Neutral Signature

Neutral Name (print)

For DCCA-OAH use only, **DO NOT WRITE HERE:**

Sanctions imposed because of noncompliance that was unjustified as a result of circumstances within a party's control on:

- Mortgagee for noncompliance-
 - a) Stay of foreclosure
 - b) A fine payable to mortgagor of up to \$1500, determined by DCCA-OAH-MFDR
- Mortgagor for noncompliance-
 - c) Removal of stay of foreclosure
 - d) A fine payable to mortgagee of up to \$1500, determined by DCCA-OAH-MFDR

Date received: _____

Received by: _____

APPENDIX B: MFDR filing website screenshots

Landing page at <https://mfdr.ehawaii.gov>:



The screenshot shows the landing page for the Mortgage Foreclosure Dispute Resolution Program. At the top is a green banner with the State of Hawaii seal and the text "DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS HEARINGS OFFICE upholding fairness in the marketplace". Below the banner is a blue navigation bar with "MFDR Home", "About", and "Login As" links. The main heading is "Mortgage Foreclosure Dispute Resolution Program". The page contains a welcome message, instructions on how to use the portal, and browser optimization information. A grey box on the right lists the program name and phone number. A footer contains links for "Subscription Services", "Terms of Use", "Privacy Policy", "ADA Compliance", "State Portal", and "Contact Us", along with a copyright notice for 2011.

MFDR Home About Login As

Mortgage Foreclosure Dispute Resolution Program

Welcome to the Mortgage Foreclosure Dispute Resolution online filing portal.

Please select your role from the "Login As" option on the menu bar in order to access your case information.

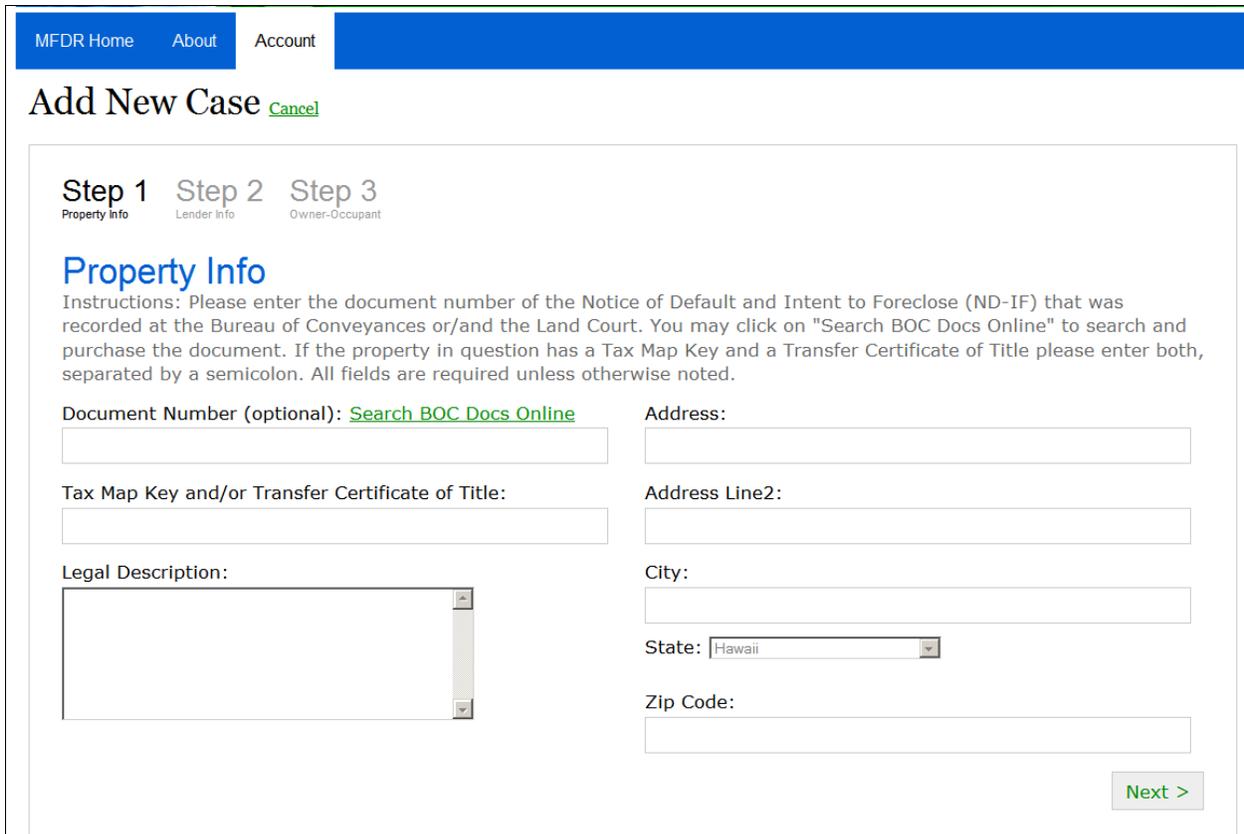
This website is optimized for the latest versions of Microsoft Internet Explorer, Mozilla Firefox, or Apple Safari. If you are having problems using the website, please upgrade your browser to the latest version. If the problems persist, please contact us.

- Mortgage Foreclosure Dispute Resolution Program
- (808) 586-2886

[Subscription Services](#) | [Terms of Use](#) | [Privacy Policy](#) | [ADA Compliance](#) | [State Portal](#) | [Contact Us](#)

Copyright © 2011, State of Hawaii. All rights reserved.

Add New Case dialogue page for Lender role:



The screenshot shows the "Add New Case" dialogue page for the Lender role. The navigation bar includes "MFDR Home", "About", and "Account" links. The main heading is "Add New Case" with a "Cancel" link. The page is divided into three steps: "Step 1 Property Info", "Step 2 Lender Info", and "Step 3 Owner-Occupant". The "Property Info" section contains instructions and several input fields: "Document Number (optional)" with a "Search BOC Docs Online" link, "Address", "Address Line2", "City", "State" (a dropdown menu currently showing "Hawaii"), "Zip Code", "Tax Map Key and/or Transfer Certificate of Title", and "Legal Description" (a text area). A "Next >" button is located at the bottom right.

MFDR Home About Account

Add New Case [Cancel](#)

Step 1 Property Info Step 2 Lender Info Step 3 Owner-Occupant

Property Info

Instructions: Please enter the document number of the Notice of Default and Intent to Foreclose (ND-IF) that was recorded at the Bureau of Conveyances or/and the Land Court. You may click on "Search BOC Docs Online" to search and purchase the document. If the property in question has a Tax Map Key and a Transfer Certificate of Title please enter both, separated by a semicolon. All fields are required unless otherwise noted.

Document Number (optional): [Search BOC Docs Online](#)

Address:

Tax Map Key and/or Transfer Certificate of Title:

Address Line2:

Legal Description:

City:

State:

Zip Code:

[Next >](#)

Case Details page, available to *all* roles, although modification to fields is limited as is appropriate to role:

MFDR Home About Account

Case Details

File ID: 1074 Case ID: 2011-1026 Created Date: 09/26/2011 Last Modified: 09/26/2011 Status: Open Owner Participation: Yes Neutral: Assigned

▶ Property Info

▶ Lender ▶ Owner-Occupant

▶ Documents

▶ Neutral

▶ Payments

Notified Owner Date: 09/26/2011 Date Received: 09/26/2011

DCCA Notes:

Owner-Occupant role login page:

MFDR Home About Login As

MFDR Owner-Occupant

Instructions: Enter the case reference number, found on the letter you received from Department of Commerce and Consumer Affairs, Mortgage Foreclosure Dispute Resolution Program, and the last name or the entity name to access your case. Once you have found your case, you can elect to participate, pay your \$300 fee, and upload proof of your owner-occupancy. You may also upload your required documents (please see your notice of election when you receive it from DCCA) instead of mailing them in or bringing them to our office in-person. All uploaded documents should be in PDF or MS Word document format, and labelled as the required document that is contained therein (e.g. your documentation of proof of owner-occupancy would be a scan of your signed certification as well as your proof as prescribed in your Notification packet, would be named "owner occupant certification.pdf). Please do not upload any picture files. If you have ANY questions about how to use this system please contact the MFDR Assistant at (808)586-2886 for help.

Case Reference Number:

Owner-Occupant's Last Name or Entity Name:

[Find Case](#)

- Mortgage Foreclosure Dispute Resolution Program
- (808) 586-2886

Lender Selection, Notice of Public Sale



NOTICE OF PUBLIC SALE

Find a Notice

First select your County, then the Island, and then the Lender. Results will appear below. Read the [Terms & Conditions](#).

County	Island	Lender
Hawaii Honolulu Kauai Maui	Oahu	BANK OF HAWAII BANK OF ASIA LEE'S VC LENDER

Results

Show <input type="text" value="10"/> entries		Data Filter: <input type="text"/>	
Date	Sale Location	Property Address	City (property)
09/07/2012	sale location	201 merchant st, Honolulu, HI, 96813	Honolulu
Showing 1 to 1 of 1 entries		First Previous 1 Next Last	

Sample Notice from test-site, NOTE: current version has Date/Time Stamps

 Hawaii.gov
  MFDR Home

 Text size: [Larger](#) / [Smaller](#) / [Reset](#)

 Stay Connected


DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
HEARINGS OFFICE
upholding fairness in the marketplace



NOTICE OF PUBLIC SALE

Public Sale Details

The following are the details of the Public Sale Notice. Read the [Terms & Conditions](#).

Auction Information

Date & Time	Location	Auctioneer	Auctioneer Phone	Auctioneer Address
09/07/2012	sale location	name of the auctioneer	8084858888	auctioneer address information, city, state, zip

Property Information

Description	Address	Island	County	TMK
located on oahu	201 merchant st, Honolulu, HI, 96813	Oahu	Honolulu	3137374748

Parties Involved

Lender	Mortgagor	Borrower	Unpaid Balance	Newspaper Publishing Notice
lender	borrower		494,949.55	adf dsfdf

Other Information

Terms & Condition of Sale

sale terms and conditions

Default Cure Conditions

cure conditions

[Back to Search Results](#)
[New Search](#)

***APPENDIX C: FNMA (“Fannie Mae”) & FHLMC (“Freddie Mac”)
directives regarding nonjudicial foreclosures***

Hawaii Legislative Changes Affecting Non-Judicial Foreclosures

June 10, 2011

This Notice pertains to existing and future foreclosure referrals in the State of Hawaii. Recently, the Hawaii legislature passed SB 651, effective as of May 5, 2011. In response to this new law, Fannie Mae is directing servicers as follows:

- Effective immediately and until further notice, all new Fannie Mae foreclosures in Hawaii must be commenced as judicial foreclosures.
- Effective immediately, all pending Fannie Mae non-judicial foreclosures in Hawaii that have not proceeded to sale should be dismissed and converted to judicial foreclosures.

Fannie Mae is establishing a maximum allowable foreclosure fee for Hawaii judicial foreclosures of \$2,200. This fee applies to all new Hawaii foreclosures as well as any pending Hawaii foreclosures that must be restarted judicially, and has been updated in the *Allowable Attorney and Trustee Foreclosure Fees* document on eFannieMae.com.

Due to potential title insurance issues, Fannie Mae may be required to eliminate certain recent REO acquisitions that resulted from non-judicial foreclosures. Upon being notified of any eliminations, servicers must immediately restart the matters as judicial foreclosures.

Fannie Mae has notified its two Retained Attorney Network law firms of its intentions with respect to pending and future Hawaii foreclosures. Those firms are Routh, Crabtree & Olsen, PS, and Clay, Chapman, Iwamura, Pulice & Nervell, AP/ALC. Servicers are reminded that Fannie Mae foreclosure referrals in Hawaii must go to one of these two law firms in the network. Servicers are responsible, however, for managing the foreclosure process, including any foreclosures that have previously been referred to law firms that are not members of the [Fannie Mae Retained Attorney Network](#).

Servicers should contact their Servicing Portfolio Manager, Servicing Consultant, or the National Servicing Organization's Servicer Solution Center at 1-888-FANNIE5 (888-326-6435) with any questions on this Notice.

Bulletin

NUMBER: 2011-11

TO: Freddie Mac Servicers

June 30, 2011

SUBJECT: SERVICING ALIGNMENT INITIATIVE AND HAWAII LEGISLATIVE CHANGES AFFECTING NON-JUDICIAL FORECLOSURES

With this *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin, we are announcing the Servicing Alignment Initiative, which is Freddie Mac’s implementation of new Servicing requirements to streamline and simplify Servicing processes, help Servicers contact delinquent Borrowers more effectively, and determine eligibility for and offer alternatives to foreclosure to distressed homeowners. Freddie Mac is adopting these changes as part of its implementation of the consistent mortgage servicing and delinquency management requirements that are described in the Federal Housing Finance Agency’s (FHFA) April 28, 2011 directive to Fannie Mae and Freddie Mac.

Additionally, we are providing specific requirements with regards to the processing of foreclosures in the State of Hawaii due to recent changes in Hawaii State law.

SERVICING ALIGNMENT INITIATIVE

Overview

The new Servicing requirements address solicitation of delinquent Borrowers and evaluation of all Borrowers for each of the alternatives to foreclosure that we offer. New Borrower communications, solicitation and evaluation requirements apply to all alternatives to foreclosure offered under the Guide, including the Home Affordable Modification Program (HAMP) and the Home Affordable Foreclosure Alternatives (HAFA) initiative. Servicers must implement processes and procedures that will assist them in their efforts to complete relief or workout options more expeditiously, and work to reduce the number of Mortgages that will ultimately result in foreclosure.

Additionally, as part of the Servicing Alignment Initiative, in a future Bulletin, Freddie Mac will announce a new modification solution, the Freddie Mac Standard Modification. The Freddie Mac Standard Modification will include a three-month trial period, and eligibility and underwriting requirements that target Borrowers who are ineligible for HAMP or Borrowers who defaulted on previous HAMP or non-HAMP modifications. The Freddie Mac Standard Modification will eventually replace the current modification solution prescribed in Guide Chapter B65, *Workout Options*. In the interim, Servicers must continue evaluating Borrowers who are ineligible for HAMP using the modification requirements specified in Chapter B65 and their other applicable Purchase Documents.

With this Bulletin, we are announcing specific changes to our Servicing requirements in the following areas:

Borrower contact

- New requirements related to establishing quality right party contact and performance standards related to the Servicer’s ability to establish quality right party contact

Compensatory fees

If the Servicer exceeds the State foreclosure time line (DDLPI to foreclosure sale) on a Mortgage plus any allowable delays, compensatory fees will be assessed in addition to any actual damages caused by the Servicer's failure to comply with the requirements of the Guide.

For Mortgages referred to foreclosure on or after **October 1, 2011**, there is a new calculation for State foreclosure time line compensatory fees. With the new calculation, foreclosure sales completed by Servicers that are less than the State foreclosure time line standard will no longer offset foreclosure sales exceeding the State foreclosure time line (i.e., netting is no longer part of the compensatory fee calculation). In addition, foreclosure sales conducted by designated counsel are now subject to the compensatory fee calculation.

Compensatory fees will not be assessed if a Servicer's aggregate amount of monthly compensatory fees is \$1,000 or less. Details of the new calculation for State foreclosure time line compensatory fees are outlined in Exhibit 83A.

For Mortgages referred to foreclosure on or after **October 1, 2011**, State foreclosure time line compensatory fees will be **billed monthly** on the Servicer Non-Performing Loans Invoice, rather than annually. The first monthly bill, to be distributed in early January of 2012, will capture State foreclosure time line compensatory fees related to Mortgages referred to foreclosure on or after October 1, 2011, resulting in foreclosure sales in October of 2011.

Subsequent Servicer Non-Performing Loans Invoices will only include compensatory fees for one month and will be for foreclosure sales conducted two months prior, provided the Mortgage was referred to foreclosure on or after October 1, 2011.

Servicers may submit data to correct past reporting discrepancies; however, no adjustment to the assessed compensatory fee(s) will be made for corrections related to inaccurate or incomplete reporting

Freddie Mac's existing compensatory fee calculation and annual assessment will continue to apply to all Mortgages referred to foreclosure prior to October 1, 2011.

Sections 66.30, *State Foreclosure Time Lines*, 66.32, *Allowable Delays in Completing a Foreclosure*, and 66.33, *State Foreclosure Time Line Performance Assessment*, and Exhibits 83 and 83A have been updated to reflect these changes.

ESCALATED CASES

We have introduced new requirements directing Servicers to have processes and procedures in place for review and response to Borrower disputes and complaints about the Servicer and/or its third-party providers that rise to the level of an escalated case. Section 51.5.1 includes new requirements related to:

- When and how Servicers must respond to and resolve Borrower complaints or disputes
- Handling Borrower complaints or disputes on Mortgages that are referred to foreclosure
- Reporting requirements to Freddie Mac

Servicers must review Guide Section 51.5.1 for all requirements specific to the Servicer's management of escalated cases.

HAWAII LEGISLATIVE CHANGES AFFECTING NON-JUDICIAL FORECLOSURES

Effective immediately, due to recent changes in Hawaii State law affecting non-judicial foreclosures, Servicers must:

- Commence all new Freddie Mac foreclosures in Hawaii as judicial foreclosures
- Convert all non-judicial foreclosures to judicial foreclosures in Hawaii that have not proceeded to foreclosure sale

In certain circumstances, Freddie Mac may be required to re-foreclose certain recent REO acquisitions that resulted from non-judicial foreclosures. Upon being notified, Servicers must rescind the non-judicial foreclosure and recommence the action as a judicial foreclosure.

In addition, due to the recent change in the foreclosure process, we are currently reviewing the maximum allowable attorney fee for Hawaii and will communicate any revision to such amount, if applicable, in a future Bulletin.

TRAINING

A suite of training materials and reference documents will be available to support the Servicing Alignment Initiative topics announced in this Bulletin. Please register for our *Bulletin Overview* webinar for a comprehensive outline of this announcement. Additional Servicing Alignment Initiative training topics are also available for registration. To register for training, please visit **The Learning Center** at www.freddiemac.com. You can also review all of our current training offerings by accessing the **Servicing Alignment Initiative** section of **The Learning Center**.

REVISIONS TO THE GUIDE

The revisions included in this Bulletin impact the following:

- Chapters 50, 51, 53, 64, 65, A65, B65, C65, D65, 66, 67, 78 and 83
- Forms 710 and 710A
- Exhibits 57A, 82, 83, 83A, 93, 94, 1131 and 1161
- Glossary
- Directory 5

CONCLUSION

If you have any questions about the changes announced in this Bulletin, please contact your Freddie Mac representative or call (800) FREDDIE and select Servicing.

Sincerely,



Tracy Hagen Mooney
Senior Vice President
Single-Family Servicing and REO