

**ANNUAL REPORT TO THE LEGISLATURE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
REGULAR SESSION OF 2012**

**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

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**FIRST ANNUAL REPORT OF THE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
TO THE LEGISLATURE FOR
THE REGULAR SESSION OF 2012**

Executive Summary

Act 48, Session Laws of Hawaii 2011 (the Act), established the Mortgage Foreclosure Dispute Resolution (MFDR) Program within the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs (the Department) to provide owner-occupants an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

The Act directed the Department to implement the MFDR Program, and report back to the Legislature on the status of the MFDR Program twenty days before the convening of the Regular Session of 2012. The Act also directed the Judiciary's Center for Alternative Dispute Resolution (CADR) to provide advice and assistance, and CADR's assistance was invaluable in helping to implement the MFDR Program.

Pursuant to the Act and under the administration of Deputy Director Everett Kaneshige and Senior Hearings Officer David Karlen, with the assistance and advice of Director Elizabeth Kent from CADR, and with less than five months time elapsed between the signing of the Act and October 1, 2011 (the deadline set by Act 48, SLH 2011), the DCCA created the dispute resolution process, documentation, websites, and entered into contractual arrangements between the Department and neutral service providers. Additionally, the DCCA hired program staff to implement and administer the MFDR Program as provided by Act 48, SLH 2011.

In order to provide neutral services for the dispute resolution process, the Department contracted with three entities for coverage of all counties within the state. On Hawaii Island, the Department selected a joint-proposal wherein Ku'ikahi Mediation Center provides neutral services for the eastern side of the island, and West Hawaii Mediation Center provides neutral services for the western side of the island. For the rest of the State, the Department selected the Mediation Center of the Pacific to provide neutral services for the City and County of Honolulu, and the Counties of Maui and Kaua'i.

The Department also contracted with Hawaii Information Consortium, LLC, to design, build, implement, and maintain a website at <https://mfdh.hawaii.gov> for the purposes of receiving foreclosure notice filings from lenders, allowing owner-occupants to elect participation online, enabling both lenders and owner-occupants to view the status of their case and upload or download required documents, and facilitate case scheduling and document dissemination to neutrals.

The MFDR Program was prepared to receive filings from lenders via its filing website at <https://mfdre.hawaii.gov> as of September 28, 2011, and, as October 1, 2011 fell on a weekend, the MFDR Program officially opened its doors on October 3, 2011.

As of November 15, 2011, no foreclosure notices were filed by lenders, and one-hundred and sixty-seven (167) notices from condominium associations for lien foreclosures.

The Program has received one-hundred (100) consumer calls between July and November 15, 2011. Ninety (90) calls were regarding requests for information about the MFDR Program, two (2) calls were regarding consumer protection issues and were forwarded to the appropriate division, five (5) calls were regarding the process to convert nonjudicial foreclosures to judicial foreclosures, and three (3) calls were incorrectly directed to the MFDR Program.

**FIRST ANNUAL REPORT OF THE
MORTGAGE FORECLOSURE DISPUTE RESOLUTION PROGRAM
TO THE LEGISLATURE FOR
THE REGULAR SESSION OF 2012**

Act 48, Session Laws of Hawaii, 2011

Act 48, Session Laws of Hawaii 2011, established the Mortgage Foreclosure Dispute Resolution (MFDR) Program within the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs (the Department) to provide owner-occupants an opportunity to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.

Within the context of the MFDR Program, the responsibilities of the Department were to set up the MFDR Program, and compile a report to the Legislature. Per Act 48, SLH 2011, the Department was instructed to seek assistance from CADR 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.

The mandate and parameters for this report are contained in Section 41 of Act 48, SLH 2011:

The department of commerce and consumer affairs shall submit a report to the legislature no later than twenty days before the convening of the regular sessions of 2012 and 2013 on the operations and outcomes of the mortgage foreclosure dispute resolution program established by section 1 of this Act, including recommendations for further legislation if necessary for the efficient operation of the program.

Operations

Between May and July the Department worked closely with CADR to establish an implementation timeline in order to meet the October 1, 2011 deadline. With significant assistance from CADR, the Department issued a Request For Proposals for contractors to provide neutral services for the dispute resolution process as established in Act 48, SLH 2011.

In July, the Department hired Seth Corpuz-Lahne as its Program Specialist for the MFDR Program. Also in July, the Department and CADR reviewed proposals submitted in response to the RFP, and drafted documentation and forms that were required by Act 48, SLH 2011. The documentation and forms were completed by the end of July, although modifications to accommodate new information and answer questions that arose during implementation have continued to date. Simultaneously, the Department began the process to build an online filing

website via Hawaii Information Consortium, LLC (HIC). Through August, September, and up through the end of October, the Department was engaged in negotiating the contracts that emerged from the RFP process and the HIC website build.

In early October the MFDR Program switched gears from designing the process and procuring the required contracts needed for operation, to training neutrals for dispute resolution and collecting the facts and statistics needed to compile this report.

CADR located a suitable trainer and worked with Mediation Center of the Pacific to confirm their availability and make the necessary travel and lodging arrangements. Training was undertaken on Hawaii Island from October 29th to October 30th, and in Honolulu from October 31st to November 1st. It was a two-day program that addressed the new law and MFDR process on the first day, and had practice sessions on the second day that dealt with the unique aspects of mortgage foreclosure dispute resolution and the perspectives of the various parties involved. Attendance was excellent, with twenty-six (26) people attending Hawaii Island training and thirty (30) at the Honolulu training. Trainers from Resolution Systems Institute (RSI) in Chicago, and speakers from local housing counseling agencies, title insurance companies, lenders, and owner-occupant and lender's counsel, conducted the training sessions.

With the training of two cadres of neutrals completed, review of the circumstances and issues surrounding the operation of the MFDR Program began. A list of possible amendments to the law was drafted for inclusion in this report, and compared against the recommendations coming from the Mortgage Foreclosure Task Force to avoid duplication of effort.

Process and Documentation

The MFDR Program staff started by creating a flow-chart illustrating the different responsibilities of the four roles possible within the program: lender/mortgagee, DCCA, owner-occupant/mortgagor, and neutral. The chart also contained references to the many floating deadlines contained within the MFDR Program, as keeping track of them is a key to ensuring compliance with the statute. The flow chart was also important from a process perspective, as it illustrates each step of the MFDR Program and the sequence in which they all occur. *All documents referenced in this section can be found in **Appendix A** of this report.*

The drafting program for the various documents required by the MFDR Program was divided based on the document's recipient. As the owner-occupant is the first to be contacted by the Department, their form letters and documents were drafted first. Here is a list of all documents enclosed with the Notice of MFDR Eligibility mailing:

- Notice of MFDR Eligibility
- MFDR Program Election Form
- MFDR Program Information

- Certification of Owner-Occupant Status
- Statement regarding Counseling Requirements
- List of Approved Housing Counselors and Budget & Credit Counselors

It should be noted that the List of Approved Housing Counselors and Budget & Credit Counselors is drawn from the United States Department of Housing and Urban Development (HUD) website and the United States Department of Justice U.S. Trustee Program website. The MFDR Program, in accordance with Act 48, SLH 2011, does not certify the approved counselors, but gets the list directly from the certifying agencies respective websites. This list is updated monthly to keep it current.

If an owner-occupant elects to participate, they are sent a second mailing that consists of the following documents:

- Owner-Occupant Notice of Case Opening
- Statement regarding Counseling Requirements
- List of Approved Housing Counselors and Budget & Credit Counselors

Although owner-occupants are notified of the counseling requirement with the first notification, if they haven't received counseling by the time they elect to participate in the MFDR Program there is a very real risk that they will be unable to fulfill the requirement before the no-fewer-than-30-days-prior-to-session deadline if they do not do so *immediately* after receiving the Notice of Case Opening. This is why the Statement regarding Counseling Requirements and the List of Approved Housing Counselors and Budget & Credit Counselors are sent a second time.

If an owner-occupant elects to participate, the lender must also be notified that a case has been opened, and a dispute resolution session scheduled, by the MFDR Program. The lender's notice consists of the following document sent within twenty (20) days from receipt of the owner-occupant's MFDR Program Election Form:

- Lender Notice of Case Opening

In the event an owner-occupant declines to participate in the MFDR Program, the lender is sent the following notice within ten (10) days of receipt of the owner-occupant's MFDR Program Election Form, or within ten (10) days of the expiration of the thirty (30) day election period:

- Lender Notice of Nonelection

When an owner-occupant elects to participate in the MFDR Program, the Department contacts the neutral service provider who is responsible for covering the geographic area of the owner-occupant's property. After scheduling a dispute resolution session with the neutral

service provider's case manager, the time, date, and place of the session is conveyed to the parties in the Notice of Case Opening that is sent to both of them. At twenty (20) days from the dispute resolution session, if either party has not yet submitted all required documents as listed on their Notice of Case Opening, they will be mailed a reminder letter in order to reduce instances of noncompliance and ensure that the process has the best possible chance of success. Once the fifteen (15) day document submission deadline is reached, the neutral service provider case manager will download all available documents, burn them to a CD and deliver them to the neutral assigned to the case. The parties can access these documents via the MFDR Program Filing Website described subsequently in this report. After the dispute resolution case is closed, the Department will mail a copy of the neutral's Closing Report to both parties within five (5) days of receipt:

- Neutral's Closing Report

Upon receipt of the Closing Report, the Department closes the case, and destroys or deletes any documentation with the exception of the Closing Report, Certification of Owner-Occupant Status and its supporting documents, and the MFDR Program Election Form, in order to reduce the file storage burden and minimize the risk of personal financial information submitted by the owner-occupant and lender from circulating outside of the MFDR Program.

CADR was of great assistance in preparing the Neutral's Closing Report, and provided valuable commentary and edits for the other documents required by the MFDR Program.

Mortgage Foreclosure Dispute Resolution Program Filing Website

In order to make filing foreclosure notices, remitting filing and program fees, and submission of documentation required by the MFDR Program, as easy as possible, a secure website was procured from HIC to perform all of these functions. The URL of the filing website is <https://mfdre.hawaii.gov>. *Screenshots of the filing website can be found in **Appendix B**.*

To meet the October 1, 2011 implementation deadline, and mindful of the total suspension of nonjudicial foreclosure actions outside of association lien foreclosures, the development of the filing website was broken up into components and prioritized with the aforementioned factors in mind. Four login roles were created: Lender, Owner-Occupant, Neutral, and Staff. Priority was given to the Lender and Staff components, as the functions performed by the Owner-Occupant and Neutral components could be easily done without a website, and it was deemed important that the filing website be able to receive filings from lenders on or before October 1, 2011. The roles will be described in order of deployment:

Lender Login Role

The Lender login role was designed and implemented first due to the extensive work and testing required for verification that the instructions for filing were clear and understandable so foreclosing mortgagees were able to input all necessary information and documents. After testing, retesting, and several website text revisions, this component was ready for the production website as of early October. A lender is required to have an ehawaii.gov subscription account in order to file electronically. This is a higher standard than is required of all other roles, and is a side-effect of the need to secure sensitive personal financial information that is handled by the website and, subsequently, the MFDR Program and neutral service providers.

Staff Login Role

The Staff login role was created for management of the filing website by MFDR Program staff, and allows staff to modify the status of cases, make note of payments submitted, upload documents, and track dates of owner-occupant elections and dispute resolution sessions. This component was designed alongside the Lender Role and was ready for the production website at the same time. A non-subscriber ehawaii.gov account that has been authorized by the MFDR Program is required to access this role.

Neutral Login Role

The Neutral login role facilitates distribution of the documentation required of the lenders and owner-occupants by the MFDR Program, and allows the neutral service providers to track cases and upload their case closing reports. Allowing each neutral to log in individually would have increased the amount of assistance the MFDR Program would have had to render to neutrals to train them in the website's use. The neutral login role is designed with the concept of a limited number of case managers in mind. As neutrals are assigned depending on their availability by their respective neutral service provider, a case is not assigned to a neutral until MFDR Program staff contact the neutral service provider and confirm that a neutral is available at the desired time and place. A non-subscriber ehawaii.gov account that has been authorized by the MFDR Program is required to access this role.

Owner-Occupant Login Role

The design of this role was undertaken with an eye toward ease-of-access in mind. While lenders could be expected to file multiple times over the lifetime of the MFDR Program, it is unlikely that an owner-occupant would be involved in multiple foreclosures in which they are eligible for participation. However, ease-of-access was not as simple as providing a listing of pending foreclosures and allowing an owner-occupant to select the one that is theirs. To protect personal financial information, a system was designed wherein the owner-occupant is provided with, on the Notice of MFDR Eligibility mailed by the Department after receipt of the foreclosure notice, a unique case reference number that is not connected to the TMK or any other

obvious identification of the property in question. When an owner-occupant logs in, that case reference number, along with their surname, is requested to verify their identity as the actual party involved in the dispute.

Once an owner-occupant has logged in, the website gives them the opportunity to elect, or decline, to participate in the MFDR Program. It also allows them to pay their program fee online, via credit or debit card, and allows the upload of documentation required by the MFDR Program (they can also mail or submit in-person their required documents, and the MFDR Program will scan and upload them to the website). They, like the lender, have the ability to download and review documentation uploaded by the other parties in the dispute.

Neutral Service Provider Procurement

Procurement of contractors who were able to provide the level and scope of services required by the MFDR Program within the October 1, 2011 deadline presented one of the bigger administrative challenges in implementing Act 48, SLH 2011. The MFDR Program was never envisioned as having to individually contract with, contact, and assign neutrals to its cases, so the RFP was designed with larger scale entities such as mediation centers, rather than individual mediators, in mind. Ideally, one contractor would have been found for each county that would have the capacity to train neutrals in the specialized knowledge required to perform dispute resolution for mortgage disputes, as well as provide facilities and staff for case management. However, after reviewing the submitted proposals it was determined that only two of them rose to that level of capability. No potential contractors submitted acceptable proposals to provide coverage for Maui County or Kaua'i County, individually, that met the Program's requirements. The assistance of CADR was instrumental in meeting this challenge.

The Department received six proposals to provide services. Ultimately, (1) Mediation Center of the Pacific (MCP) was selected to cover the City and County of Honolulu, Maui County, and Kaua'i County, due to its long-standing activities in the alternative dispute resolution community, access to facilities, and ability to craft the training program and curriculum needed to train neutrals for cases, and (2) the joint proposal of Ku'ikahi Mediation Center and West Hawaii Mediation Center (KMC/WHMC) was selected because of their prior experience with the Judiciary's Third Circuit foreclosure mediation pilot program, and because coverage of a geographic area the size of Hawaii County would have made finding an individual contractor who was able to fulfill the terms of the RFP very difficult.

CADR proved to be a valuable partner in procurement of the neutral services and continues to work with the Department and the contractors in provision of services.

Neutral Training

CADR located a nationally recognized training team from Resolution Systems Institute (RSI), in Chicago. The Mediation Center of the Pacific designed the curriculum and organized the training sessions.

The first training was on Hawaii Island, in Waimea, on October 28th and 29th, with a cadre of 26 potential neutrals, some of whom were involved at some level with the Third Circuit mortgage foreclosure mediation pilot program. The composition was a mixed group of community volunteers, lawyers, and realtors. This reflected the volunteer nature of the Third Circuit pilot program. Reactions to the training were very positive, the questions asked were relevant and aspects of the MFDR Program process were modified to address their concerns. One such example was a commitment on the part of the MFDR Program to send a reminder to

parties that were at risk of missing the 15-day-from-Dispute-Resolution-session document submission deadline.

The second training was on Oahu, in downtown Honolulu, on October 31st and November 1st, with a cadre of 30 potential neutrals. This group was primarily lawyers (representing both lenders and owner-occupants), with some realtors. The cadre had questions about the MFDR Program process and Act 48 that were comprehensive and probing. Of greatest importance to the MFDR Program's policies were questions surrounding handling of documents in electronic format that are to be given to the Neutrals for their review prior to the dispute resolution session. The Program clarified that these documents, delivered to the neutral on a CD, are not to be copied on to any other machine, and must not be transmitted via email, in order to protect the personal financial information contained within. Reactions to the training were, again, very positive, with participants citing particularly the presentation from MFDR Program staff regarding Act 48, SLH 2011, as helpful and informative.

The training curriculum at both locations was broken up into two main sections. The first day was primarily focused on acquainting the neutrals with Act 48, SLH 2011, and the aspects of mortgage foreclosure and possible workout options that ranged from modification to mitigation. The second day was mostly scenarios and role-playing, with emphasis on the differing perspectives of lenders, their servicers, and owner-occupants.

Training does not stop with the initial sessions. In order to keep neutrals engaged, especially in light of the current lack of nonjudicial foreclosure cases, the MFDR Program intends to follow up with a semi-annual newsletter or bulletin to training participants, to keep them in the loop, and possible follow up trainings to reinforce lessons learned and update training based on new policies or information.

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 a result of Act 48, SLH 2011, and uncertainty on behalf of condominium homeowners associations' counsel regarding whether or not filing lien foreclosure notices with the Department is necessary, the Department has agreed to accept, log, and file, association lien foreclosure notices. As of November 15, 2011, the Department has accepted one-hundred and sixty-seven (167) condominium association lien foreclosure notice filings.

As of November 15, 2011, the program has received one-hundred (100) consumer calls, which for reporting purposes have been sorted into several categories: information requests, consumer protection, judicial conversion, and wrong number. The breakdown is as follows:

Category	#
Information Request	90 calls
Consumer Protection	2 calls
Judicial Conversion	5 calls
Wrong Number	3 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 .

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, 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.” Concurrently, the Mortgage Foreclosure Task Force (MFTF) has been looking at modifications to Act 48, SLH 2011, and HRS 667, generally, pursuant to Act 162, SLH 2010. Where the MFDR Program’s recommendations line up with the recommendations coming out of the MFTF, the MFDR Program is in support of the MFTF’s position to avoid duplication of effort.

Narrow DR Session scheduling window to prevent an owner-occupant from being subject to a potentially impossible counseling deadline:

Once the Program receives the owner-occupant’s election form, the Program has 20 days to determine when the dispute resolution session shall occur. The Program needs to select a date to mail the notice of election within those 20 days, which will be the date used to determine the scheduling window for the DR session. The window for scheduling the DR session is currently 30-60 days from the mailing of the notice of election. The counseling requirement for the program *also* requires the owner-occupant to receive counseling not less than 30 days before the DR Session. SO:

Notice of Election + (30 to 60 days) = DR Session date

DR Session – 30 days = Counseling Deadline

If the Program schedules DR as early as legally possible, 30 days from the notice of election, the Counseling deadline will be impossible to meet.

The Mortgage Foreclosure Foreclosure Task Force (MFTF), Act 162, SLH 2010 is aware of this issue and has recommended the following amendment, that changes the scheduling window from thirty to sixty days from the mailing of the Notice of Case Opening, to forty to seventy days, instead. The MFDR Program supports the MFTF’s recommendation:

§667-79 Notification of opening a dispute resolution case;

mortgagee's program fee. (a) If an owner-occupant elects to participate in the mortgage foreclosure dispute resolution program, the department shall open a dispute resolution case. Within twenty days of receipt of the owner-occupant's election form and fee in accordance with section 667-78, the department shall mail written

notification of the case opening to the parties by registered mail, return receipt requested, which shall include:

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

The dispute resolution session shall be scheduled for a date no less than [~~thirty~~]forty and no more than [~~sixty~~] seventy days from the date of the notification of case opening, unless mutually agreed to by the parties and the neutral.

(b) Within fourteen days of the date of the mailing of the written notification, the mortgagee shall pay a program fee of \$300 to the department.

(c) The written notification of a case opening under this section shall operate as a stay of the foreclosure proceeding in accordance with section 667-83, and may be filed or recorded, as appropriate, at the land court or bureau of conveyances.

Allow Owner-Occupants to elect to participate in DR online

The current language of Act 48 only allows an owner-occupant to elect participation via a physical form that is mailed with the Notice of MFDR Eligibility. Allowing owner-occupants to elect online would remove a barrier to participation.

The MFDR Program supports the recommendations of the MFTF in this matter, which has drafted recommended language that is substantially similar to the following text:

§667-78 Owner-occupant's election of dispute resolution; owner-occupant program fee; right to dispute resolution waived. (a) An owner-occupant elects to participate in the mortgage foreclosure dispute resolution program by returning to the department:

- (1) The completed program election form:
 - a. provided pursuant to section 667-77(2), OR;
 - b. provided on a website maintained by the department;
- (2) Certification under penalty of perjury that the mortgagor is an owner-occupant, accompanied with any supporting documentation, including copies of recent utility billing statements, voter registration records, real estate property tax records, or state identification forms; and
- (3) A program fee of \$300.

The completed form and fees shall be received by the department no later than thirty days after mailing of the department's notification pursuant to section 667-77

(b) If the completed form and fee are not received within the required time period, the owner-occupant shall be deemed to have waived any right to participate in the mortgage foreclosure dispute resolution program with respect to the subject property and the foreclosure notice filed with the department.

(c) If the owner-occupant does not elect to participate in dispute resolution pursuant to this part, the department shall notify the mortgagee within ten days of receiving an election form indicating nonelection or the termination of the thirty-day time period for election. After receiving the department's notification, the mortgagee may proceed with the nonjudicial foreclosure process according to the process provided in part I or part II of this chapter, as applicable.

Clarify HRS Chapter 667 scope to exclude condominium association lien foreclosures from DCCA filing requirements

Soon after the MFDR Program began operations after the May 5, 2011 Act 48, SLH 2011, enactment date, the Department was contacted by several law firms that perform nonjudicial foreclosures for association liens regarding their concern that they might be obligated to file association lien nonjudicial foreclosure notices with the DCCA, and that they were at risk of an unfair deceptive act or practice violation under HRS §667-60 if they failed to do so. To mitigate this concern, the MFDR Program, has agreed to accept, log, and store association lien nonjudicial foreclosure notices.

However, the MFDR Program does not do anything further with these filings, as such foreclosures are not subject to the dispute resolution requirement, per HRS §667-71(b) –

“This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise under a declaration filed pursuant to chapter 514A or 514B, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan.”

The MFDR Program is only a repository for a filing that not only serves no direct purpose but is duplicative, since the Bureau of Conveyances records foreclosure notices.

The MFTF has proposed amendments to remedy this situation that would remove association lien foreclosures from the scope of HRS Chapter 667, and the MFDR Program supports this solution. The proposed language in the current MFTF draft legislation under consideration is as follows:

Section 667-71, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise under a declaration filed pursuant to chapter 514A [~~or~~], 514B, or 421J, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan.”

Remove requirement for the Neutral to witness the signing of the Settlement Document, and remove requirement for Settlement Document to be filed with the Neutral's Closing Report

Requiring the Neutral to witness the signing of the document is unnecessary, and filing of the Settlement Document with the Department as part of the Closing Report would leave the MFDR Program in possession of an unacceptable amount of personal financial information that would inevitably be a part of a Settlement Document once the basic agreement is fleshed out. The MFTF has proposed changes to HRS §667-81, subsections (c) and (d) that would eliminate this problem. The MFDR Program supports their proposed changes:

(c) If the parties have complied with the requirements of this part and have reached an agreement, the agreement shall be memorialized in a settlement document signed by the parties or their authorized representatives. ~~[If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral. If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session.]~~ The parties shall be responsible for drafting any agreement reached, and for filing or recording the settlement document with the land court or the bureau of conveyances, as appropriate, and enforcing the settlement document. ~~[The neutral shall file the settlement document with the neutral's closing report.]~~ The settlement document shall be a contract between the parties and shall be enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either

party. If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-M shall be released upon filing or recording the settlement document with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate.

(d) If the parties to a dispute resolution process reach an agreement which resolves the matters at issue in the dispute resolution before the first day of the scheduled dispute resolution session pursuant to this section, the parties shall notify the neutral by that date. The neutral shall thereafter issue a closing report that the parties have reached an agreement prior to the commencement of a dispute resolution session. If the agreement provides for foreclosure, the parties shall memorialize the agreement in a writing signed by both parties [~~and provided to the neutral. Any agreement authorizing foreclosure shall be attached to the neutral's closing report~~]. The parties may file or record the report at the bureau of conveyances or the land court, as appropriate. If the agreement authorizes foreclosure, the stay of the foreclosure under section 667-M shall be released upon filing or recording with the land court or bureau of conveyances, as appropriate. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate. No fees shall be refunded if the parties come to an agreement prior to a dispute resolution session conducted pursuant to this part.

Allow the MFDR Program to contract with Approved Housing Counselors

It is possible that, as a result of receiving counseling from an approved counselor due to the counseling requirement in HRS §667-80(b), an owner-occupant could reach an agreement with the foreclosing mortgagee with the counselor's assistance. Resolving the dispute is the top priority of the MFDR Program, and such an outcome would be desirable. The Department would like the option to contract with approved housing counselors so that if an agreement is reached before the Neutral Service Provider becomes involved, the counselor's services can be compensated. Any such contract would be structured so as to avoid the possibility of having to pay both the neutral service provider and the approved counselor. At the time of this report's drafting, the language under consideration by the MFTF has not been finalized, but the MFTF has generally favored this change, and the MFDR Program supports it as well.

Limit the scope of HRS 667-60, regarding Unfair Deceptive Acts or Practices, to HRS 667, Part III: Other Provisions *OR* Limit the scope of HRS 667-60 per the MFTF's recommendations

Act 48, SLH 2011 was passed at the behest of the public to curb the abuse of the Part I nonjudicial foreclosure process, increase safeguards and consumer protection, provide a path to convert nonjudicial foreclosures into judicial foreclosures, and, most importantly for the purposes of this discussion, to implement a structured method to give the best-qualified homeowners a chance to modify their loans, and a means to negotiate mitigation for homeowners who cannot qualify for a modification. The retention of both Parts I & II of the nonjudicial foreclosure law speaks to the Legislature's intent to keep nonjudicial foreclosures open as a means to reduce the amount of time, money, lawyer's fees, and court resources spent by lenders, borrowers, and the State, on resolving mortgage disputes in the post-recession environment of increased numbers of distressed properties.

Act 48, SLH 2011 contained two new unfair or deceptive act or practice (UDAP) sections. One, §667-60, is the cause of uncertainty amongst lenders, their attorneys, and the title insurance companies. The other was contained within the Mortgage Foreclosure Dispute Resolution (MFDR) program, §667-76(b). §667-60 applies to *all* of HRS Chapter 667, while the reach of §667-76(b) is limited to §667-76. This means that §667-76(b) is redundant, as a violation of any part, section, or subsection, of HRS 667 is a UDAP violation under Part III, §667-60.

§667-60 applies consumer protection law much more broadly than is consistent with other applications of the UDAP penalty. In §667-76(b) the Legislature deemed that a UDAP of limited scope, placed at the beginning of the process, was sufficient to provide for the rights of the consumer with respect to nonjudicial foreclosures and the MFDR Program. Furthermore, by prompting a boycott of the nonjudicial foreclosure law, §667-60 has inadvertently foiled the purpose of the MFDR Program as well as the larger picture of providing a time and cost-effective means of working through the foreclosure process, due to the uncertainty it generates regarding potential liability for lenders and their representatives.

In order to make the MFDR Program work, it is necessary to encourage lenders to use the nonjudicial foreclosure process as opposed to the longer, costlier, judicial process. This could be done by limiting the scope of §667-60 to its own part, HRS 667, Part III: Other Provisions, without seriously impacting the level of consumer protection gained with the passage of Act 48, SLH 2011.

Without going into fine detail, it would be beneficial to look at the purpose of each section contained within Part III, post-Act 48:

Pre-Act 48 Sections

- 667-51 – Appeals
- 667-52 – Buyer’s choice of title insurer and escrow agent

Act 48 Sections

- 667-50 – Definitions
 - “foreclosure notice” defined as notice of intention to foreclose pursuant to HRS 667-5 or notice of default and intention to foreclose pursuant to HRS 667-22
- 667-53 – Conversion to judicial foreclosure; residential property conditions
 - Residential property requirements regarding eligibility for judicial conversion
- 667-54 – Petition for conversion; residential property; Required contents
- 667-55 – Notice of default and intention to foreclose; residential property; required statement on conversion
- 667-56 – Prohibited conduct
 - Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement
 - Specifying a fictitious place in the public notice of the public sale
 - Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale
 - Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than forty-five days after the completion of the public sale
 - Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least five per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser
 - Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor
 - Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program
- 667-57 – Suspension of foreclosure actions by junior lienholders
- 667-58 – Valid notice

- Servicers and lender representatives can only issue notice if they are on the foreclosing lender or mortgagee affiliate statement recorded at the Bureau of Conveyances (BoC), the BoC number of the affiliate statement is required on any such notice.
- 667-59 – Actions and communications with the mortgagor in connection with a foreclosure
 - Mortgagee is bound by agreements, obligations, representations, or inducements made on its behalf by its agents
- 667-60 – Unfair or deceptive act or practice
 - Violation of any part of HRS 667 is an unfair or deceptive act or practice, subject to treble damages under HRS §480-2

Part III of Chapter 667 has become more of a “consumer protection” part, than an “other provisions” part.

So, why limit the scope of §667-60?

1. The existence of the §667-60 chapter UDAP makes the §667-76(b) UDAP completely superfluous.
2. §667-60 started out as a targeted UDAP that was aimed very specifically at the problems of unmaintained property, and questionable servicer practices
 - Upon passing as Act 48, it was bundled with consumer protection sections and put into Part III: Other Provisions. This indicates its basic character as a consumer protection section, placed within a consumer protection part. §667-60’s association with §667-56 (Prohibited Conduct) throughout its legislative life further reinforces this basic purpose behind the UDAP section.
3. While the conference committee report makes a number of amendments and statements as to purpose, it never says that the intent was to make nonjudicial foreclosures so potentially hazardous as to make them functionally unusable.
4. Time and again the foreclosing mortgagees and title insurance companies have cited §667-60 as the primary reason as to why they will advise their clients to avoid nonjudicial foreclosures.
5. Narrowing the §667-60 UDAP’s reach to Part III of Chapter 667 would retain the section’s original character of imposing penalties for the sections that consistently preceded it in the law’s history.

One of the reasons for the uncertainty surrounding the new HRS 667, is that, as a chapter, it contains over 60 individual sections, spans forty pages (more, depending on your copy), and covers topics from the format of the foreclosure notice, deficiency judgments, to requirements regarding recordation. While it is true that not *all* of Part III in HRS 667 is consumer protection, better than three-quarters of that Part could be characterized as such, and even some of the sections that could not be directly categorized thusly are connected to sections that can. Limiting

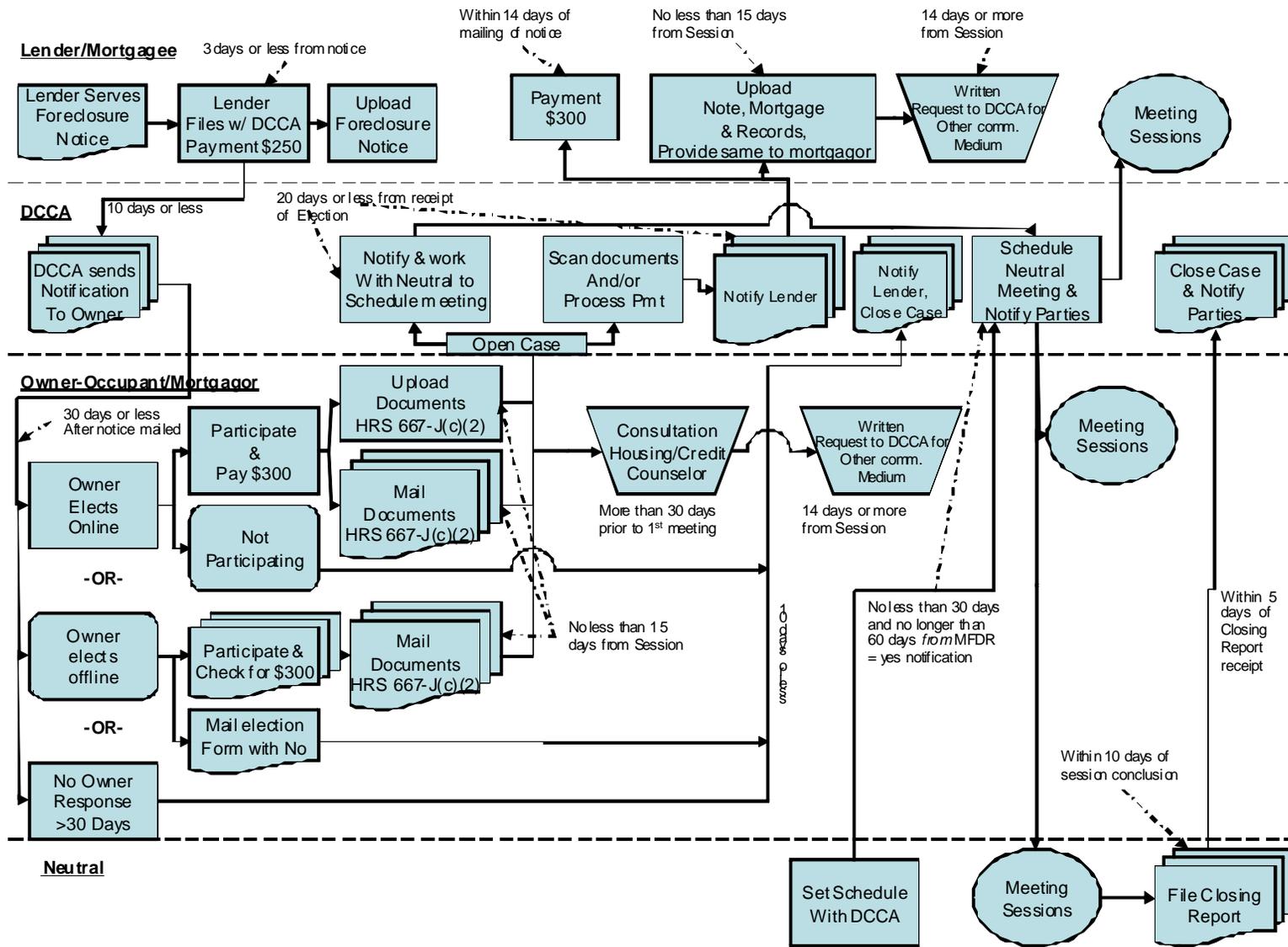
the scope of HRS §667-60 to Part III would increase certainty, and decrease risk, when lenders opt to use HRS 667, by giving a well-defined list of things that the lender or their servicer absolutely must do correctly.

Significantly, the MFTF has endorsed an approach similar to this, but as of this report's drafting it has not finalized its proposal. The MFTF has proposed limiting HRS §667-60 to a list of sections identified as being consumer protection issues. The MFTF proposal would address the issues raised by HRS §667-60, as well as the MFDR Program proposed amendment.

APPENDIX A: MFDR Program documents and notices

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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 Program (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 to participate in the MFDR Program, pay your program fees, and submit scans of your

Certification of Owner-Occupant Status and supporting documentation 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 30 and 60 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 thirty (30) 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)

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

1\$ Wiser Consumer Education, Inc.

116 N. Second Street
Suite A
Krum, TX 76249
972-292-7279

Delivery Method: Internet

www.1dollarwiser.com

1st Choice Credit Counseling & Financial Education a.k.a. DBSM Inc.

2049 Marco Drive
Camarillo, CA 93010
877-692-5669

Delivery Method: Internet & Phone

www.mybknow.com or www.mybknowspanish.com

A 123 Credit Counselors, Inc

703 Waterford Way (NW 62nd Ave.)
Suite 220
Miami, FL 33126
305-269-9201

Delivery Method: Internet, Phone, and Internet Phone

www.a123cc.org

1-888-412-2123

Abacus Credit Counseling

15760 Ventura Boulevard
Suite 700
Encino, CA 91436
800-516-3834

Delivery Method: Internet & Phone

www.abacuscc.org

Access Counseling, Inc.

633 W. 5th Street
Suite 26001
Los Angeles, CA 90071
800-205-9297

Delivery Method: Internet & Phone

www.accesscounselinginc.org

Advantage Credit Counseling Service, Inc.

River Park Commons
2403 Sidney Street, Suite 400
Pittsburgh, PA 15203
888-511-2227

Delivery Method: Internet & Phone

www.advantagecccs.org

Advisory Credit Management, Inc.

5769 West Sunrise Blvd.
Plantation, FL 33313
800-786-3940

Delivery Method: Internet

www.advisorycreditmanagement.org

Allen Credit and Debt Counseling Agency

195 Brook Street
Wessington, SD 57381
888-415-8173

Delivery Method: Internet & Phone

www.acdcas.com

Alliance Credit Counseling, Inc.

13777 Ballantyne Corporate Pl.
Suite 100
Charlotte, NC 28277
888-594-9596

Delivery Method: Phone & Internet Phone

www.knowdebt.org

Alpha Community Services

121 West Water Street
Suite D
Sandusky, OH 44870
419-626-1450

Delivery Method: Phone

American Consumer Credit Counseling, Inc.

130 Rumford Avenue
Suite 202
Newton, MA 02466
866-826-6924

Delivery Method: Internet & Phone

www.consumercredit.org

**BKEDCERT.com a d/b/a of Pacific Rim Institute
for Development and Education, Inc.**

6230 Wilshire Blvd.
Suite 1763
Los Angeles, CA 90048
800-845-7171

Delivery Method: Internet Phone

www.PacificRimCounseling.com

Black Hills Children's Ranch, Inc.

1644 Concourse Drive
Rapid City, SD 57703
605-348-1608

Delivery Method: Internet, Phone, and Internet Phone

www.pioneercredit.com

800-888-1596

**CCCS of Ventura County, Inc. / SurePath
Financial Solutions**

80 North Wood Road
Suite 200
Camarillo, CA 93010
877-615-7873

Delivery Method: Internet & Phone

www.surepath.org

Colorado Credit Counselors d/b/a CCC

1690 S. Federal Blvd.
Denver, CO 80219
303-551-5599

Delivery Method: Phone

800-569-9269

Community Credit Counselors, Inc.

101 N. Lynnhaven Road
Suite 303
Virginia Beach, VA 23452-7523
800-531-5124

Delivery Method: Internet & Phone

bankruptcyinfo.org

**ConsumerBankruptcyCounseling.info, a Project
of the Tides Center**

1014 Torney Avenue
San Francisco, CA 94129

Delivery Method: Internet

www.consumerbankruptcycounseling.info

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

**Consumer Credit Counseling Service of Maryland
& Delaware, Inc.**

757 Frederick Road
2nd Floor
Baltimore, MD 21228
800-642-2227

Delivery Method: Internet & Phone

www.cccs-inc.org

**Consumer Credit Counseling Service of Orange
County**

1920 Old Tustin Avenue
Santa Ana, CA 92832
888-289-8230

Delivery Method: Internet & Phone

www.cccsoc.org

**Consumer Credit Counseling Service of
Rochester, Inc.**

1000 University Avenue
Suite 900
Rochester, NY 14607
888-724-2227

Delivery Method: Internet & Phone

www.cccsofrochester.org

**Consumer Credit Counseling Service of San
Francisco**

595 Market Street
Suite 1500
San Francisco, CA 94105
800-777-7526

Delivery Method: Internet, Phone, & Internet Phone

www.cccsf.org

**Consumer Credit Counseling Service of the
Midwest, Inc.**

4500 East Broad Street
Columbus, OH 43213
800-355-2227

Delivery Method: Internet & Phone

www.cccservices.com

**Consumer Credit Counseling Service of West
Florida, Inc.**

14 Palafox Place
Pensacola, FL 32502
800-434-0268

Delivery Method: Internet & Phone

www.cccswfl.org

800-343-3317

**Consumer Financial Education Foundation of
America, Inc.**

2 North 20th Street
Suite 1030
Birmingham, AL 35203
205-321-2822

Delivery Method: Internet & Phone

www.cfefa.org

1-866-684-8171

**CredAbility, Consumer Credit Counseling Service
of Greater Atlanta, Inc.**

270 Peachtree Street NW
Suite 1800
Atlanta, GA 30303
866-672-2227

Delivery Method: Internet & Phone

www.credability.org

Credit Advisors Foundation

1818 South 72nd Street
Omaha, NE 68124
402-393-3100

Delivery Method: Internet, Phone & Internet Phone

www.yourbankruptcypartner.com

800-625-7725

Credit Card Management Services, Inc.

4611 Okeechobee Blvd.
Suite 114
West Palm Beach, FL 33417
800-920-2262

Delivery Method: Internet, Phone & Internet Phone

www.debthelper.com

Cricket Debt Counseling

10121 SE Sunnyside Rd.
Suite 300
Clackamas, OR 97015
866-719-0400

Delivery Method: Internet & Phone

www.cricketdebt.com

Debt Education and Certification Foundation

112 Goliad Street
Suite D
Benbrook, TX 76126
866-859-7323

Delivery Method: Internet, Phone & Internet Phone

www.debt-foundation.org

DebtorWise Foundation

14 Austin Park
Suite 100
Pittsford, NY 14534
585-385-6699

Delivery Method: Internet & Phone

www.debtorwise.org

800-849-3036

Debt Reduction Services, Inc.

6213 N. Cloverdale Road
Suite 100
Boise, ID 83713
208-378-0200

Delivery Method: Phone & Internet Phone

877-688-3328

www.debtredutionservices.org

Evergreen Financial Counseling

2080 SE Oak Grove Boulevard
#24
Milwaukie, OR 97267
800-581-3513

Delivery Method: Internet & Phone

www.evergreenclass.com

Family Financial Education Foundation

724 Front Street
Suite 340
Evanston, WY 82930
307-789-2010

Delivery Method: Phone

1-888-292-4333

**Garden State Consumer Credit Counseling, Inc.,
dba Novadebt**

225 Willowbrook Road
Freehold, NJ 07728
732-409-6281

Delivery Method: Phone & Internet Phone

800-992-4557

www.novadebt.org

Granite Lake Educational Resources

111 West Cataldo
Suite 200
Spokane, WA 99201
509-325-2511

Delivery Method: Phone & Internet Phone

866-366-0599

www.backtogo.org

GreenPath, Inc.

38505 Country Club Drive, Suite 210
Farmington Hills, MI 48331-3429
800-630-6718

Delivery Method: Internet, Phone & Internet Phone

www.greenpathbk.com

800-630-6718

Hummingbird Credit Counseling and Education, Inc.

3737 Glenwood Avenue
Suite 100
Raleigh, NC 27612
800-645-4959

Delivery Method: Internet & Internet Phone

www.hbcce.org

InCharge Debt Solutions

5750 Major Blvd
Suite 175
Orlando, FL 32819
866-729-0049

Delivery Method: Internet

www.bankruptcy.incharge.org

InCharge Education Foundation, Inc.

5750 Major Blvd
Suite 310
Orlando, FL 32819
866-729-0049

Delivery Method: Internet & Phone

www.personalfinanceeducation.com

Institute for Financial Literacy, Inc.

449 Forest Avenue
Portland, ME 04101
207-879-0389

Delivery Method: Phone & Internet Phone

866-662-4932

www.financiallit.org

Money Management International, Inc.

14141 Southwest Freeway
Suite 1000
Sugar Land, TX 77478-3494
(877) 964-2227

Delivery Method: Internet & Phone

www.moneymanagement.org

MoneySharp Credit Counseling Inc.

1916 N. Fairfield Avenue
Suite 200
Chicago, IL 60647
866-200-6825

Delivery Method: Internet

www.moneyssharp.org

National Financial Literacy Foundation, Inc.

555 Winderley Place
Suite 300
Maitland, FL 32751
877-380-6353

Delivery Method: Internet & Phone

www.learnfinances.org

No Limits Community Development Corporation

3203 Benjamin E. Mays Drive
Atlanta, GA 30311
678-973-2739

Delivery Method: Internet & Phone

www.CCR-Atlanta.org

855-296-3711

SK Foundation

60 E. Hopkins Road
Gilbert, AZ 85295
877-376-7122

Delivery Method: Internet

www.myonlinebankruptcyclass.com

The Mesquite Group, Inc.

600 Six Flags Drive
Suite 400
Arlington, TX 76011
877-769-4069

Delivery Method: Phone

Springboard Nonprofit Consumer Credit Management, Inc.

4351 Latham Street
Riverside, CA 92501
951-781-0114

Delivery Method: Internet & Phone

www.bkhelp.org or www.bancarrota.org

888-425-3453

Stand Sure Credit Counseling, a/k/a Biblical Financial Concepts, Inc.

124 Oakridge Drive
Oneonta, AL 35121
205-421-1590

Delivery Method: Internet, Phone & Internet Phone

www.standsurecc.org

866-232-3600

Take Charge America, Inc.

20620 North 19th Avenue
Phoenix, AZ 85027-3585
623-266-6100

Delivery Method: Phone

866-750-9634

The Kingdom Ministries, Inc.

6094 Apple Tree Drive
Suite 11
Memphis, TN 38115
901-552-5131

Delivery Method: Phone

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://mfd.ehawaii.gov> , using your case reference number and surname to log in.

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 a fine payable to the 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.

Best regards,

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». Upon receiving your notification the Department sent notice to the owner-occupant on «DCCA_Notice_to_Mortgagor_Mailed_on» regarding their right to elect to participate in the Mortgage Foreclosure Dispute Resolution (MFDR) Program. 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, the Office of Administrative Hearing hereby notifies you that the mortgagor has elected to participate in the MFDR Program. As of this notice being mailed, 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.

These documents must be submitted to the MFDR Program in no later than **fifteen (15) days before the first scheduled Dispute Resolution Session** on «Date_of__DR_1st_Session».

Documents or program fees may be submitted and paid 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

Bring *ALL* documents submitted electronically or otherwise with you to the dispute resolution session.

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 at all stages of the dispute resolution process to a person who is so authorized;
- b) Failure to provide the required information or documents (HRS §667-80(c)(1));
- 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 and a fine payable to the owner-occupant not to exceed \$1,500.

Per HRS §667-79(c) and HRS §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.

Best regards,

[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 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 I or Part II of HRS 667, as applicable.

Best regards,

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>:



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

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](#)

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Add New Case dialogue page for Lender role:

MFDR Home About Account

Add New Case [Cancel](#)

Step 1 **Step 2** **Step 3**
Property Info Lender Info 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](#)

Tax Map Key and/or Transfer Certificate of Title:

Legal Description:

Address:

Address Line2:

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