



LEGAL AID
SOCIETY OF HAWAI'I



ACT 48 RELATING TO MORTGAGE FORECLOSURES:

MORTGAGE FORECLOSURE DISPUTE RESOLUTION, NON-JUDICIAL TO JUDICIAL CONVERSION, AND DEFAULT ON CONDOMINIUM ASSOCIATION DUES

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Act 48 Overview

Act 48 gives homeowners facing a non-judicial foreclosure an opportunity to meet face-to-face with their lenders to possibly, modify their loans or to devise a payment plan to keep their homes (“dispute resolution”). The act also gives homeowners the option to switch from a non-judicial foreclosure process to a judicial foreclosures process (“conversion”). Homeowners can choose either dispute resolution or conversion, not both. Act 48 also includes rules Condominium Associations must follow when a homeowner defaults on payment of their Association dues and gives homeowners the right to enter into reasonable payment plans with the Association.

This brochure covers 3 components of Act 48:

- 1) Non-Judicial Mortgage Foreclosure Dispute Resolution;
- 2) Non-Judicial to Judicial Conversion; and
- 3) Default on Payment of Condominium Association Dues.

(1) Mortgage Foreclosure Dispute Resolution (MFDR)

MFDR is an optional process you can choose if you would like to have a third party mediator attempt to help you and your lender work out an alternative to foreclosure. **Remember, a decision must be made before you choose MFDR or conversion because once you choose one you can’t change your mind and choose the other.**

MFDR is an option only if you meet all 3 of the following requirements:

- You are facing a non-judicial, power-of-sale foreclosure; **and**
- You are the owner and occupant of your home (which is your residence); **and**
- You have lived in your home for at least 200 consecutive days.

The PROCESS:

- 1) Your lender tells the State that they are starting a non-judicial foreclosure on your home.
- 2) The foreclosure process is suspended from the time the State receives notice of the non-judicial foreclosure.
- 3) The State will send you a packet with information on the MFDR Program.
- 4) If you choose MFDR, you will have 30 days after receiving notice from the State to tell the State that you elect to use the MFDR program and pay a \$300 program fee.
- 5) If you decide not to use the program or do not inform the State that you want to use the program within 30 days, the foreclosure will continue.
- 6) If you tell the State that you want to use the program, the State has 20 days to notify you, your lender, and mediator about the date, time, and location of the meeting, which must be scheduled between 30 and 60 days from the State’s notification date.
- 7) You and your lender must give all necessary documents to each other (and to the State) at least 15 days before the scheduled meeting with your lender and mediator.
- 8) If parties are able to reach an agreement in the MFDR program, foreclosure is terminated.
- 9) If parties are unable to reach an agreement in the MFDR program, foreclosure continues.

MEETING WITH LENDER AND MEDIATOR

- There must be at least one meeting, and the meeting must be less than 3 hours long.
- The mediator can extend the meeting for up to another 3 hours; the extended meeting can be on a different day or on the same day as the first meeting but needs to be within 60 days of the first meeting unless the mediator extends the deadline.
- You and your lender must be present at the meeting unless unforeseen circumstances prevent you or your lender from attending, in which case a request to meet by phone or video must be given to the State at least 14 days before the scheduled meeting.
- Both you and your lender are required to participate in good faith and with honest intentions.

(2) Non-Judicial to Judicial Conversion

Act 48 also allows a homeowner to elect a change from a non-judicial foreclosure to a judicial foreclosure. This is called “conversion.” **Remember, a decision must be made before you choose MFDR or conversion because once you choose one, you can’t change your mind and choose the other.**

Why would I want to convert a foreclosure from non-judicial to judicial?

If you have a legitimate legal defense to the foreclosure or your lender has done something wrong, a judicial foreclosure may be better than a non-judicial foreclosure because you would have an opportunity to tell a judge your side of the story.

Why would I want to keep a foreclosure in the non-judicial process?

In a non-judicial foreclosure, if your property is sold and you still owe your lender money after the sale is completed (in other words, there is a “a deficiency”), your lender can not try to collect from you the money still owed unless the debt is secured by other collateral, or as otherwise provided by law. In a judicial foreclosure there is a greater chance that your lender will try to collect a deficiency from you.

THE CONVERSION PROCESS

- You have 30 days from the time you receive your non-judicial foreclosure notice to file a petition telling the court that you want a judicial foreclosure instead of a non-judicial foreclosure.
- The fee for filing a Petition for Conversion will be no more than \$525 and could be substantially less, but the exact amount has not yet been determined. Contact the court where you will file (see last page) for the current amount required.
- After you file your petition with the Circuit Court, you and everyone who has an interest in property and/or is on the mortgage (including any co-signors) must agree to participate in the judicial foreclosure within 45 days.

- If everyone doesn't agree or doesn't file their agreement with the court within 45 days, the court can dismiss the petition for judicial foreclosure and order that no other petitions for switching to judicial foreclosure are allowed for your mortgage.
- If everyone agrees and informs the court within 45 days, the foreclosure is put on hold.
- Everyone who agreed to the judicial foreclosure has a chance to explain their side of the story to the court and to present any defenses and counter-claims.

(3) Default on Payment of Condominium Association Dues (aka maintenance fees).

If your lender forecloses on your condo, and your condo has a condo association, your lender must notify your condo association about the foreclosure.

IF YOUR CONDO ASSOCIATION IS FORECLOSING ON YOU, ACT 48 GIVES YOU THE OPPORTUNITY TO WORK OUT A PAYMENT PLAN WITH THE ASSOCIATION

- Ask your condo association how much you owe (including missed payments, your condo association's attorney's fees and costs, and all other fees and costs).
- Condo association tells you the amount owed.
- You have 5 business days (from the date the association tells you the amount owed) to tell the condo association that you want to pay the missed payments ("cure the default"). You must do this **in writing** and it must be delivered to the condo association, or their lawyer, by hand delivery or certified mail return receipt requested. Keep a copy of the letter and any proof that you delivered it correctly (certified mail signature card and receipt if sent certified mail).
- The foreclosure is put on hold for 60 days (longer if you and the association agree on an extension).
- The total amount owed must all be paid within 60 days from the time you told the association that you intended to "cure the default," unless the association agrees to give you more time. However:
- If you can not afford to pay the total amount owed, the association must accept a proposed plan as long as it is reasonable. Reasonable is defined as including the current month's maintenance fee, plus some additional amount toward the amount owed.

Note: Act 48 also includes other rules related to the foreclosure and sale of condominium units which are not relevant to this brochure and not included here.

For more information, please visit:

* the Department of Commerce and Consumer Affairs at <http://hawaii.gov/dcca/oah/mfdr/mortgage-foreclosure-dispute-resolution-mfdr-program>; and

* the Hawaii State Judiciary at http://www.courts.state.hi.us/self-help/foreclosure/foreclosure_conversion.html

For More Information Or Assistance Call The Legal Aid Office In Your Community:
On the web at <http://www.legalaidhawaii.org>

O`AHU:		536-4302	KAUA`I:	245-7580
BIG ISLAND:	Hilo	934-0678	LANA`I:	565-6089
	Kona	329-8331	MOLOKA`I:	553-3251
MAUI:		242-0724		

Other resources:

Judiciary: <http://www.courts.state.hi.us/>

DCCA: <http://hawaii.gov/dcca/>

REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.