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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

In the Matter of the Judiciary's Response
to the COVID-19 Outbreak

ORDER REGARDING FORECLOSURE OR NON-JUDICIAL FORECLOSURE RELATED ACTIONS: CERTIFICATION OF COMPLIANCE WITH THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT IN FORECLOSURES

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, J.J.)

On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act was adopted into law. The CARES Act provides for a nationwide moratorium on some, but not all, foreclosure proceedings. Specifically, the Act provides foreclosure relief for "federally backed loans." See § 4022(a)(2). Under the CARES Act, unless the subject property is vacant or abandoned, a servicer of a federally backed loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment, order a sale, or execute a foreclosure-related eviction or foreclosure sale. See § 4022(c)(2). Currently, the moratorium on foreclosures of

federally backed loans has been extended to at least August 31, 2020.

A majority of the foreclosure or non-judicial foreclosure related actions filed in our trial courts involve or arise out of mortgage agreements. Whether a mortgage that is the subject of a foreclosure or an action arising out of a non-judicial foreclosure is (or is not) a federally backed mortgage within the protections of the CARES Act is not information necessarily contained in the court record. It is therefore appropriate to ensure that foreclosure or non-judicial foreclosure related actions filed or pending in our trial courts comply with the protections provided under the federal CARES Act. Accordingly,

IT IS HEREBY ORDERED:

1. Any party or authorized agent or representative of a party pursuing a judicial foreclosure action or an action in our state courts arising out of a judicial or non-judicial foreclosure (including but not limited to ejectment actions) must file a signed declaration attesting under penalty of law or perjury, and based on personal knowledge, that the mortgage subject to the foreclosure action or non-judicial foreclosure:

a. is NOT a federally backed mortgage loan as defined by § 4022(a)(2) of the CARES Act; or

b. is a federally backed mortgage loan as defined by § 4022(a)(2) of the CARES Act; the foreclosure moratorium cited in § 4022(c) of the CARES Act has expired as of May 18, 2020, or has not otherwise been extended, and if an action arising out of a non-judicial foreclosure, such as an ejectment, that there was no violation of the foreclosure moratorium of the CARES Act; and the property and mortgage are not currently subject to a forbearance plan as defined in §§ 4022(b) and (c) of the CARES Act, or

c. affects a property that is vacant and abandoned and not subject to the CARES Act.

2. The CARES Act declaration must be filed as follows:

a. For any new foreclosure action or action pursued in the courts based on a non-judicial foreclosure, filed on or after the date of this Order, the CARES Act declaration must be filed contemporaneously with the filing of the complaint for foreclosure or other action.

b. For foreclosure cases or actions based on a non-judicial foreclosure filed before the date of this Order:

i. The CARES Act declaration must be filed prior to or contemporaneously with the filing of any motion requesting a decree of foreclosure or any motion requesting confirmation of a public sale;

ii. If a motion seeking a decree of foreclosure or confirmation of a public sale was filed prior to the date of this Order, but has not been heard by the court, the moving party must file the CARES Act declaration at least 18 days prior to the scheduled hearing date;

iii. For cases in which a proposed written order seeking a decree of foreclosure, a judgment on a decree of foreclosure, an order confirming a public sale, a judgment on a confirmation of sale, and/or a writ of possession or ejectment is pending with the court pursuant to Circuit Court Rule 23, the CARES Act

declaration must be filed before the court will enter the written order or judgment.

iv. For actions based on a non-judicial foreclosure, the declaration must be filed before the court will enter a written order or judgment.

Further, with respect to such pending orders and judgments:

A. The respective court must be notified of the filing of the CARES Act declaration separate and apart from the Notice of Electronic Filing automatically generated by the Judiciary Electronic Filing System upon the filing of a document.

B. Notification shall be made by emailing the assigned Judge's chambers and notifying the clerk that the declaration has been filed on a matter pending entry of a written order and judgment.

C. The email notification must include the case name, civil number, and the filing date of the proposed order and judgment.

3. Judges shall not order a decree of foreclosure, issue a judgment on an order or decree of foreclosure, confirm a public sale, or issue a writ of ejectment or for possession, until the party pursuing foreclosure of a mortgage has filed a CARES Act declaration in compliance with this Order and the court is reasonably satisfied that there was compliance with the CARES Act requirements governing mortgage foreclosures.

4. This Order is effective the date of this order through August 31, 2020, and may be modified or extended as circumstances warrant. This Order also does not otherwise affect a judge's equitable discretion in foreclosure cases.

DATED: Honolulu, Hawai'i, June 26, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson