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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

SECOND ORDER EXTENDING JUNE 26, 2020 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, Wilson, and Eddins JJ.)

On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act was adopted into law. The CARES Act provided for a nationwide moratorium on some, but not all, foreclosure proceedings. Specifically, the Act provided foreclosure relief for "federally backed loans." Under the CARES Act, unless the subject property was vacant or abandoned, a servicer of a federally backed loan could 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.

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 federal CARES Act is not information necessarily contained in the court record.

Thus, on June 26, 2020, this court entered the "Order Regarding Foreclosure or Non-Judicial Foreclosure Related Actions: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Foreclosures," which set forth a certification process to ensure that foreclosure or non-judicial foreclosure related actions filed or pending in our trial courts were in compliance with the protections provided under the federal CARES Act. The order was extended on August 28, 2020 following the extension of the foreclosure moratorium of federally backed loans by federal agencies. Currently, as extended, the June 26, 2020 order expires on December 31, 2020.

Although the foreclosure moratorium under the CARES Act has expired, federal agencies, including the Federal Housing Finance Agency ("FHFA") and the U.S. Government of Housing and Urban Development ("HUD"), have continued to extend the moratorium on foreclosures of federally backed loans covered under the CARES Act. The FHFA has extended its foreclosure

moratorium through January 31, 2021, and HUD has extended its foreclosure moratorium through February 28, 2021.

Given the number of foreclosure cases currently pending in the trial courts at various stages of the foreclosure process, it is necessary for the certification process to remain in effect to ensure continued compliance with the protections provided under federal law.

Therefore, pursuant to Article VI, section 7 of the Hawai‘i Constitution and Hawai‘i Revised Statutes § 602-5(a)(6),

IT IS HEREBY ORDERED that the June 26, 2020 "Order Regarding Foreclosure or Non-Judicial Foreclosure Related Actions: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Foreclosures" is further extended until February 28, 2021. This Order may be further 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, December 23, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins