

**Electronically Filed
Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the

TEMPORARY RULES FOR IMPLEMENTATION OF THE
CONVERSION PROCEEDING ESTABLISHED BY ACT 48 § 5
OF THE 2011 HAWAI‘I SESSION LAWS

ORDER ADOPTING TEMPORARY RULES FOR IMPLEMENTATION
OF THE CONVERSION PROCEEDING ESTABLISHED BY
ACT 48 § 5 OF THE 2011 HAWAI‘I SESSION LAWS AND FORMS

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that the Temporary Rules for Implementation of the Conversion Proceeding Established by Act 48 § 5 of the 2011 Hawai‘i Session Laws, attached hereto, are adopted, effective nunc pro tunc May 5, 2011 through December 31, 2012.

IT IS FURTHER ORDERED that Forms A, B, and C, attached hereto, are adopted and shall be appended to the Temporary Rules for Implementation of the Conversion Proceeding Established by Act 48 § 5 of the 2011 Hawai‘i Session Laws, effective nunc pro tunc May 5, 2011 through December 31, 2012.

IT IS FURTHER ORDERED that the trial courts are authorized to insert circuit and court identifiers, appearance

information, addresses, and contact information in the forms and to publish the forms in print or electronic format for the respective courts and circuits.

DATED: Honolulu, Hawai'i, May 18, 2011.

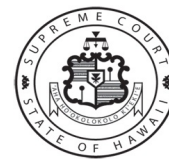
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



Temporary Rules for Implementation of the Conversion Proceeding Established by Act 48 § 5 of the 2011 Hawai'i Session Laws

Rule 1. Commencement of Action

An action to convert a non-judicial foreclosure to a judicial foreclosure action shall be initiated by filing, in the circuit court of the circuit in which the property subject to foreclosure is located, a certified conversion petition. The certified conversion petition shall be in a form that substantially conforms to Form A appended to these temporary rules.

The petition shall name as respondents the foreclosing party and any parties with an interest in the subject property or obligations on the secured loans, including co-signers and guarantors, who are not petitioners.

Rule 2. Fees

Upon the filing of the certified conversion petition the clerk shall collect a filing fee of \$300.

Rule 3. Service

Petitioner shall, in addition to any notice and service requirements set out in Act 48 § 5 (2011), serve the petition in accordance with the service requirements of Rule 5 of the Hawai'i Rules of Civil Procedure. Summons pursuant to Rule 4 of the Hawai'i Rules of Civil Procedure is not required. Petitioner shall file proof of service in the record.

Rule 4. Answer

No later than 30 days after service of the petition, any respondent who contests allegations of the petition shall file a response specifically contesting or admitting each allegation of the petition. Failure to file a timely response shall be deemed an admission of each factual allegation in the petition.

Rule 5. Submission

Any party with an interest in the subject property or obligations on the secured loans, including co-signers and guarantors, who is not a petitioner may submit a submission to the judicial process and jurisdiction of the circuit court. The submission shall be filed no later than 45 days after the petition was filed on a form that substantially complies with Form B appended to these temporary rules.

Rule 6. Computation of Time; No enlargement.

Time shall be computed in accordance with Rule 6 of the Hawai‘i Rules of Civil Procedure, except that no enlargements of time are allowed.

Rule 7. Hearing.

Upon receipt of responses to the petition or expiration of the time in which responses could be filed, the circuit court shall determine whether a hearing is to be had. If the circuit court concludes a hearing is to be had, the court shall schedule the hearing to be held no later than 30 days after the response was filed and shall so notify the parties.

Rule 8. Limited Purpose.

These temporary rules are intended to provide a speedy determination of the conversion petition and are not intended to litigate any other claim for relief. Except as specifically provided in these temporary rules, the Hawai‘i Rules of Civil Procedure do not apply to the conversion proceeding.

Rule 9. Judgment

No later than 10 days after a hearing or the date a hearing could have been had, the circuit court shall enter its judgment granting or denying the petition. Judgment on the petition shall be on a form that substantially conforms to Form C attached to these rules and may include only

(1) denial of the petition, a statement the non-judicial foreclosure may proceed, and dismissal of any other claims; or

(2) grant of the petition, conversion of the non-judicial foreclosure to a judicial foreclosure, instruction to the Respondent foreclosing party to file an action for foreclosure within thirty days, and dismissal of any other claims.

Form A - Conversion Petition

Filing Party Name
Filing Party Mailing Address
Filing Party Telephone Number

IN THE CIRCUIT COURT OF THE _____ CIRCUIT

Name(s) of Petitioner(s),)	Special Proceeding No. _____
)	
Petitioner(s),)	
)	
v.)	
)	
Name(s) of Respondent(s),)	
)	
Respondent(s).)	
)	
_____)	

CERTIFIED CONVERSION PETITION

Petitioners <name(s)> assert for their cause:

1. Petitioners are the owners and occupants of a residential property located in the <county of _____> at <street address>, identified as Tax Map Key <number>, and <certificate of title number or transfer certificate of title number>.
2. Respondent <name of foreclosing respondent> has initiated a non-judicial foreclosure on the property identified in paragraph 1.
3. The notice of default and intent to foreclose was received by Petitioners on <date>. A copy of the foreclosure notice that was served on Petitioners is attached.

Form A - Conversion Petition

4. The residential property identified in paragraph 1 is and has been Petitioners' primary residence for at least 200 days prior to <the date in paragraph 3 when notice was received>.

5. Petitioners elect to convert the non-judicial foreclosure to a judicial foreclosure.

6. The following Respondents, also named in the caption above, are additional owner-occupants and mortgagors of the property described in paragraph 1:

<insert names>.

7. The following Respondents, also named in the caption above, signed the promissory note or other instrument evidencing the debt purportedly secured by the mortgage being foreclosed:

<insert names>.

8. The Service Members Civil Relief Act, 50 U.S.C. App. § 501, may apply to the following parties:

<List names. If none, write "none.">

9. By signatures below, Petitioners certify, subject to penalties for perjury, they
- (a) are owners-occupants of the property described in paragraph 1 above and seek to convert a non-judicial foreclosure to a judicial foreclosure; and
 - (b) served a copy of this conversion petition upon <name of attorney identified in the foreclosure notice> by <means and place of service>.

Form A - Conversion Petition

Wherefore, Petitioners pray for judgment requiring Respondent <name of foreclosing party> to file a foreclosure action in the <Circuit Court of the _____ Circuit> <Land Court of the State of Hawai'i>, no later than 30 days after entry of the judgment in this conversion action.

Dated: <City>, Hawai'i, <date>.

Signatures of Filing Parties

Typed Names of Filing Parties

Form B- Submission Statement

Filing Party Name
Filing Party Mailing Address
Filing Party Telephone Number

IN THE CIRCUIT COURT OF THE _____ CIRCUIT

Name(s) of Petitioner(s),)	Special Proceeding No. _____
)	
Petitioner(s),)	
)	
v.)	
)	
Name(s) of Respondent(s),)	
)	
Respondent(s).)	
)	
_____)	

SUBMISSION STATEMENT

I, the undersigned below and Respondent herein, am an

___ owner-occupant and mortgagor of an interest in the residential property described in the petition and my interest is pledged or otherwise encumbered by the mortgage being foreclosed; or

___ a person who signed the promissory note or other instrument evidencing the debt secured by the mortgage being foreclosed.

I agree to submit myself to the judicial process and jurisdiction of the circuit court in this conversion proceeding and any foreclosure proceeding that results therefrom.

DATED: <City>, Hawai'i, <date>

Signature

Typed Name of Signer

Judgment Granting Conversion Petition:

JUDGMENT

This action was heard by the Circuit Court of the _____ Circuit, the Honorable <name of judge> presiding. In consideration of the petition, the responses thereto, and the record,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure, that the petition is granted and Judgment is hereby entered in favor of Petitioners <name(s)> as follows:

(1) The non-judicial foreclosure previously initiated by Respondent <name> is converted to a judicial foreclosure; and

(2) Respondent shall file the judicial foreclosure action in the Circuit Court of the _____ Circuit> <Land Court of the State of Hawai'i> within 30 days after entry of this judgment.

(3) All other claims in this action are dismissed.

DATED: Honolulu, Hawai'i, <date signed by judge and filed>.

JUDGE OF THE ABOVE-ENTITLED COURT

Judgment Denying Conversion Petition:

JUDGMENT

This action was heard by the Circuit Court of the _____ Circuit, the Honorable <name of judge> presiding. In consideration of the petition, the responses thereto, and the record, it appears the Petitioner has failed to prove the material allegations of the petition. Therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure, that the petition is denied and Judgment is hereby entered in favor of Respondent <name>, the non-judicial foreclosure may proceed, and all other claims in this action are dismissed.

DATED: Honolulu, Hawai'i, <date signed by judge and filed>.

JUDGE OF THE ABOVE-ENTITLED COURT