

February 24, 2023

VIA EMAIL: MBlyden@Legvi.org

The Honorable Marvin A. Blyden
Chairman
Committee on Housing, Transportation, Infrastructure, and Telecommunications
35th Legislature of the Virgin Islands
Capitol Building
P.O. Box 1690
St. Thomas, VI 00804

RE: Residential Housing Market Update

Dear Senator Blyden:

Your correspondence of February 10, 2023 was received with gratitude and respect. However, owing to previously scheduled commitments, I am unable to attend the Committee on Housing, Transportation, Infrastructure, and Telecommunications on February 27, 2023. Notwithstanding, what follows are key aspects surrounding the residential housing market that have and will continue to impact its viability in the United States Virgin Islands (USVI).

Undoubtedly, rising interest rates, which escalated by at least 4.25% in 2022 via the Federal Reserve's effort to curb inflation, has dampened residential real estate transactions in the USVI. Moreover, with interest rates steadily increasing – coupled with the fact that the territory has its lowest level of residential real estate inventory available in the past 15 years – affordability of new home purchases for first-time buyers as well as opportunities to refinance existing mortgages is expected to have an adverse impact on demand for banking related services. Furthermore, the impending recession on top of ongoing supply chain issues will give rise to increased residential construction costs and a higher likelihood that residential “housing starts” will be negatively impacted.

Structurally, there are three (3) additional factors that have played a significant role in enhancing the viability of the residential housing market in the USVI:

- First, the number of lenders providing residential mortgages in the USVI has declined to five (5) contrasted with ten (10) banks, including some of the largest global money center institutions, such as Citibank, Bank of America, Chase, and Barclays. Here, the benefit of developing legislation that may increase competition from locally chartered financial institutions will serve to improve pricing offered to prospective borrowers;
- Next, the contraction of lenders in the USVI is inextricably linked to our judicial system. That is, the court dockets are seemingly overwhelmed, as a typical matter of foreclosure – even if uncontested – will take upwards of four (4) to five (5) years. Regrettably, these delays drive up the costs of lending operations, which is already a high-cost operating environment, to the detriment of all USVI borrowers. To partially address the overcapacity inherent in the judicial system, which is not due to a lack of effort by judges or other staff in the USVI judicial system, in

2021, the Virgin Islands Banking Association (VIBA) transmitted the enclosed proposed legislation to the 34th Legislature, which would establish a well-defined process for foreclosure of commercial properties and non-owner occupied residential properties (e.g., time shares and rental villas) that can be consummated without judicial involvement. Similar procedures are successfully utilized in over 50% of stateside jurisdictions, with the following benefits:

- Resources of the courts could be better allocated to more pressing community matters, rather than being consumed by routine foreclosures. It is important to emphasize that foreclosure of an owner-occupied residence would continue to be administered by the courts;
 - Costs associated with the foreclosure of commercial properties and non-owner occupied residential properties, including legal fees, court fees, and lender expenses, will be mitigated and not passed on (or subsidized by) USVI borrowers who pay their loans in a timely manner;
 - The risk premium (or cost) attached to loans associated with the potential of foreclosure will be reduced;
 - Property taxes, which are normally disrupted during the foreclosure process, will be paid more consistently to the government; and
 - Deterioration of property value, including those of the surrounding foreclosure, is mitigated thereby stabilizing property assessment values and income to the government.
- Lastly, insurance premiums are a significant expense for USVI consumers and businesses – particularly given the windstorm losses that insurance carriers have incurred combined with the ever-present risk of earthquakes. Moreover, with Lloyd’s Syndicates, which have historically provided a large percentage of coverage for residential consumers, no longer participating in the USVI as an admitted carrier, additional rate increases are highly likely absent new entrants. As such, VIBA has offered its support of the enclosed Bill No. 34-0371, which would enable the Federal Home Loan Bank (FHLB) to offer membership to USVI based insurance carriers. FHLB members can obtain financing at favorable rates and terms to meet liquidity needs. Such funding can be extremely critical in a post-disaster environment for an insurance provider and could be a critical contributor to curtailing escalating insurance premiums.

Senator, the VIBA respectfully requests that the 35th Legislature give strong consideration and expedited deliberation of Bill No. 34-0371, as well as the proposed legislation related to the foreclosure of commercial properties and non-owner occupied residential properties. Both bills will strengthen the viability of the residential housing market while mitigating the structural defects discussed herewith.

We appreciate the opportunity to provide testimony related to the residential housing market and look forward to further collaboration soon on these matters to bring a modicum of redress to our constituency.

Sincerely,

James E. Crites
Chief Executive Officer

Encl: 1) Non-Judicial Foreclosure of Commercial Properties (Proposed Legislation); 2) Bill No. 34-0371

BILL NO. _____

Thirty-Fourth Legislature of the Virgin Islands

June 17, 2021

To amend Title 28, Chapter 23, Virgin Islands Code, by adding a new Subchapter II to provide for the non-judicial foreclosure of commercial properties and for other purposes related thereto

PROPOSED BY: NOT FOR DISTRIBUTION/ FOR DISCUSSION PURPOSES ONLY

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 28 Chapter 23, Virgin Islands Code, is amended by designating the existing language as “Subchapter I. Judicial Foreclosure” and adding a new Subchapter II to read:

“SUBCHAPTER II. NON-JUDICIAL FORECLOSURE

PART 1. DEFINITIONS AND OTHER GENERAL PROVISIONS

SECTION 541. SHORT TITLE. This Subchapter may be cited as the “Virgin Islands Non-judicial Foreclosure Act”.

SECTION 542. DEFINITIONS. In this Subchapter:

(1) “Address for notice” means:

(A) With respect to a notice given by a secured creditor:

(i) If the intended recipient has given to the secured creditor a security instrument or other document in connection with a security instrument that contains an address, the most recent address in the security instrument or document or the most recent address of which the secured creditor has knowledge;

(ii) if the sources described in item (i) hereof do not disclose an address, the most recent address that is identifiable from examination of the public records in the Office of the Recorder of Deeds and, if personal property is being foreclosed together with real property, the public records containing filings of title transfers and security interests in the type of personal property being foreclosed;

(iii) if the sources described in items (i) and (ii) hereof do not disclose an address and the secured creditor knows the intended recipient is a tenant, subtenant, or assignee of a leasehold in all or part of the real property collateral, the address of the real property

collateral or some portion thereof, including the designation of any office, apartment, or other unit that the secured creditor knows is possessed by the recipient, with the notice directed to the recipient by name, if known, or otherwise "To person occupying property at" followed by the physical address or description of the real property collateral;

(iv) if the secured creditor does not know that the intended recipient is a tenant, subtenant, or assignee of a leasehold in all or part of the real property collateral and the sources described in items (i) and (ii) hereof do not disclose an address, if any, determined by reasonable efforts of the secured creditor to be a correct address for the recipient or, if none can be determined, the address of the real property collateral or some portion thereof; or

B) With respect to a notice given by a person other than a secured creditor, the most recent address stated in a document provided by the recipient to the person giving notice.

(2) "Address of the individual conducting the foreclosure" means the address contained in a notice of default pursuant to Section 552 or a notice of non-judicial foreclosure pursuant to Section 554.

(3) "Collateral" means property, real or personal, subject to a security interest.

(4) "Common interest community" means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay for real property taxes, insurance premiums, maintenance, or improvement of other real property described in a declaration or other governing documents, however denominated. In this paragraph, "ownership" includes a leasehold interest if the period of the lease is at least twenty (20) years, including renewal options.

(5) "Day" means calendar day.

(6) "Debtor" means a person that owes payment or other performance of an obligation, whether absolute or conditional, secured under a security instrument. The term includes a person that guarantees such an obligation and a person that owns property securing such an obligation, whether or not the person is personally liable on the obligation.

(7) "Document" means a tangible medium on which information is inscribed.

(8) "Expenses of foreclosure" means the reasonable expenses incurred by a foreclosing creditor for expenses in connection with a foreclosure, including a foreclosure discontinued under Section 601. These expenses include costs of transmission of notices, advertising, title reports, inspections and examinations of the collateral, management and securing of the collateral, taxes, insurance, filing and recording fees, attorney's fees and litigation expenses incurred to the extent provided in the security instrument or authorized by law, appraisal fees, the fee of the person conducting the foreclosure sale, fees of court-appointed receivers, and other expenses reasonably necessary to the foreclosure.

(9) "Foreclosing creditor" means a secured creditor that is engaged in a foreclosure under this Subchapter.

(10) "Guarantor" means a person that is liable for the debt of another. The term includes a surety, indemnitor and an accommodation party.

(11) "Individual" means a natural person.

(12) "Individual conducting the foreclosure" means the individual identified in a notice of default pursuant to Section 552 or a notice of non-judicial foreclosure pursuant to Section 554.

(13) "Interest holder" means a person that holds a legally recognized security interest in real or personal property that is being foreclosed under this Subchapter.

(14) "Notice" means a document containing required information and signed by the person required to provide the information.

(15) "Office of Recorder of Deeds" means the Office of the Lieutenant Governor of the Virgin Islands, Office of the Recorder of Deeds in the judicial district in which the real property collateral is located.

(16) "Original notice of non-judicial foreclosure" means the first notice of non-judicial foreclosure given pursuant to Section 554 instituting a foreclosure under this Subchapter.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(18) "Real property" means any estate or interest in, over, or under land, including minerals, structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the deed or instrument of conveyance. The term includes the interest of a landlord or tenant and an interest in a deeded common interest community.

(19) "Recipient" means a person to which a Notice is given

(20) "Record," used as a verb, means to submit a document complying with applicable legal standards, with required fees and taxes paid, to the Office of the Lieutenant Governor, Office of the Recorder of Deeds in the judicial district in which the real property collateral is located.

(21) "Recording data" means the date, book and page number and/or document number at which a document is recorded in the Office of the Recorder of Deeds.

(22) "Residential debtor" means a debtor who is an individual and who owns, or is obligated on an obligation secured in whole or in part by, and occupies residential real property. The term includes a person that is owned or controlled by such an individual.

(23) "Residential real property" means real property that, when a security instrument is entered into with respect to the property, shall be a homestead which is the actual abode of and owned by the residential debtor or their spouse. Residential real property shall not include a Time share unit.

(24) "Secured creditor" means a creditor that has the right to foreclose a security interest in real property.

(25) "Security instrument" means a mortgage, land sale contract, lease, or other document that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by acquisition or retention of a lien, a lessor's interest under a lease, or title to the real property. A document is a security instrument even if it also creates or provides for a security interest in personal

property. If a security instrument provides that a default under any other agreement is a default under the security instrument, the security instrument includes the other agreement. The term includes a modification or amendment of a security instrument and a document creating a lien on real property to secure an obligation owed by an owner of the real property to an association in a common interest community or under covenants running with the real property.

(26) "Security interest" means an interest in real or personal property created by a security instrument that secures payment or performance of an obligation.

(28) "Sign" means to execute or adopt a tangible symbol with the present intent to authenticate a document.

(29) "Time share" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

SECTION 543. APPLICATION.

(a) Except as otherwise provided in subsection (b), this Subchapter applies to, and authorizes the non-judicial foreclosure of every security interest in real property located in the Territory created on or after the effective date of this Subchapter, if the security instrument provides in substance that the security interest may be foreclosed pursuant to this Subchapter or by non-judicial process.

(b) This Subchapter may not be used to foreclose:

- (1) A security interest in residential real property that shall be a homestead which is the actual abode of and owned by the residential debtor or their spouse;
- (2) A security interest in rents or proceeds of real or personal property;
- (3) A security interest that does not specifically provide for non-judicial foreclosure in the security instrument; or
- (4) A lien created by statute or operation of law.

(c) A secured creditor may not give an original notice of non-judicial foreclosure under this Subchapter if a judicial proceeding is pending to foreclose the security interest or to enforce the secured obligation against a person primarily liable for the obligation. An original notice of non-judicial foreclosure under this Subchapter may be given even if a judicial proceeding is pending or a judicial order has been obtained for appointment of or supervision by a receiver of the collateral, possession of the collateral, enforcement of an assignment of rents or other proceeds of the collateral, collection or sequestration of rents or other proceeds of the collateral, or enforcement of the secured obligation against a guarantor or a guarantor's property.

(d) If a security instrument covers both real property and personal property, a secured creditor foreclosing under this Subchapter with respect to the real property may also proceed in the foreclosure against the personal property to the extent permitted by Title 11A, Article 9, Virgin Islands Code.

(e) This Subchapter does not preclude or govern foreclosure or other enforcement of a security interest in real property by judicial or other action permitted by law pursuant to Subchapter I of this Chapter.

SECTION 544. VARIATION BY AGREEMENT.

(a) Except as otherwise provided in subsections (b) through (d) of this Section, the parties to a security instrument may not vary by agreement the effect of a provision of this Subchapter.

(b) The time within which a person must respond to a notice given by a secured creditor may be extended by agreement.

(c) The parties to a security instrument may vary the effect of a provision of this Subchapter if the provision expressly permits the parties to do so.

(d) The parties by agreement may determine the standards by which performance of an obligation under this Subchapter is to be measured if those standards are not manifestly unreasonable.

SECTION 545. DAY OF PERFORMANCE. If this Subchapter or a notice given pursuant to this Subchapter requires performance on or by a certain day and that day is a Saturday or a legal holiday as provided in Title 1, Section 171, Virgin Islands Code, the performance is sufficient if done on the next day that is not a Saturday or a legal holiday.

SECTION 546. MANNER OF GIVING NOTICE.

(a) Subject to subsections (b) through (d), notice is given by:

- (1) Handing it to the recipient;
- (2) If the recipient's address for notice is an office, leaving it at the office with an individual in charge or, if no one is in charge, leaving it in a conspicuous place in the office;
- (3) If the recipient's address for notice is a dwelling, leaving it at the dwelling with an individual of suitable age and discretion residing therein; or
- (4) Depositing it with the United States Postal Service or a commercially reasonable delivery service, properly addressed to the recipient's address for notice, with costs of delivery paid.

(b) If a person giving a notice pursuant to this Subchapter and the recipient have agreed to limit the methods for giving notice otherwise permitted by subsection (a), that limitation is enforceable.

(c) A notice to a foreclosing creditor is sufficiently addressed if directed to the address of the individual conducting the foreclosure.

(d) If a notice is not given in accordance with subsections (a) through (c) but is received by the recipient within the time it would have been received if properly given, it is treated as having been properly given as of the time of receipt.

SECTION 547. RECEIPT OF NOTICE.

(a) A notice is received by a foreclosing creditor when it is delivered to and available at the address of the individual conducting the foreclosure.

(b) A notice is received by a recipient other than a foreclosing creditor:

- (1) When it is delivered to and available at a place that satisfies the requirements of Section 545 for giving notice to that recipient;
- (2) If the recipient is an individual, when it comes to the recipient's attention; or
- (3) If the recipient is not an individual, when it is brought to the attention of the individual responsible for the transaction involving the security instrument or when it would have been brought to that individual's attention if the recipient had exercised reasonable diligence.

SECTION 548. SUFFICIENCY OF NOTICE.

A notice that contains minor errors or information not required by law is sufficient if the errors are not misleading and the information does not obscure the required information.

SECTION 549. REVOCATION OF NOTICE.

Except as otherwise provided in Section 571, a person that has given a notice may revoke it by a subsequent notice unless the recipient materially changed its position in reliance on the notice before receiving the revocation.

SECTION 550. KNOWLEDGE.

(a) A person knows or has knowledge of a fact if:

- (1) The person has actual knowledge of the fact;
- (2) The person has received a notice or notification of the fact; or
- (3) From all of the facts and circumstances known to the person at the time in question, the person has reason to know the fact exists.

(b) If a foreclosing creditor would have reason to know a fact only through an inspection of the collateral, knowledge of the fact is imputed to the creditor only to the extent that the creditor has made an inspection.

PART 2. PROCEDURES BEFORE FORECLOSURE

SECTION 551. RIGHT TO FORECLOSE. A secured creditor has a right to foreclose under this Subchapter if all conditions required by law and the security instrument as prerequisites to foreclosure are satisfied and the collateral is not exempt pursuant to Section 543, subsection (b) of this Subchapter.

SECTION 552. NOTICE OF DEFAULT AND RIGHT TO CURE.

(a) Before notice of non-judicial foreclosure may be given, a foreclosing creditor must give a notice of default to each debtor, and any period allowed for cure by this Section and by the security instrument must expire without cure being made.

(b) A notice of default must identify the collateral and the objection and must state:

- (1) With particularity, the facts establishing that a default has occurred;
- (2) If the default is curable and cure requires the payment of money, the amount to be paid, including the daily rate of accrual for amounts accruing over time;
- (3) If the default is curable and cure does not require the payment of money, the performance required to cure the default;
- (4) If the default is not curable, that the default cannot be cured;

- (5) The time within which cure must be made in order to prevent accrual of the secured creditor's right to foreclose;
- (6) The name, physical and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual or, if the foreclosing creditor is not an individual, the name, physical and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom a person may communicate for further information concerning the default; and
- (7) That foreclosure may be commenced on account of the default and, if the default is curable, that foreclosure will not be commenced if the default is cured in a timely manner.

(c) Subject to subsection (e) and any additional right to cure provided in the security instrument, within thirty (30) days after notice of default is given to the last person entitled to the notice, any person may cure the default..

(d) If none of the collateral is real property, the thirty (30)-day period specified in subsection (c) for cure of a monetary default may be reduced by a term of the security instrument to a period not less than ten (10) days.

(e) A secured creditor may give a notice of default even if a previous notice of default for a different default is pending.

(f) The rights to notice of default and to cure a default provided by this Section do not impair or limit any right to notice of default or to cure a default provided by the security instrument. The period for cure provided by this Section and any period for cure provided by the security instrument run concurrently unless the security instrument provides otherwise.

(g) If a default is cured within the time for cure provided by this Section or after expiration of that time but before acceleration of the principal amount owing on the secured obligation or the giving of an original notice of non-judicial foreclosure, the secured creditor may not give a notice of non-judicial foreclosure or accelerate the principal amount owing on the secured obligation because of that default. Any acceleration because of that default is ineffective.

(h) During a period allowed for cure of a default under this Section, a secured creditor may enforce any remedy, other than foreclosure, provided for by the security instrument and enforceable under law other than this Subchapter if enforcement does not unreasonably interfere with the ability of the debtor against which enforcement is sought to cure a default under this Section.

SECTION 553. NOTICE OF NON-JUDICIAL FORECLOSURE: MANNER OF GIVING.

(a) If a secured creditor has a right to foreclose under Section 557, the secured creditor may commence foreclosure by giving a notice of non-judicial foreclosure. The notice is a prerequisite to foreclosure and must comply with subsections (b) and (c) and Section 554.

(b) A foreclosing creditor shall record a copy of the notice of non-judicial foreclosure in the Office of the Recorder of Deeds. All persons acquiring an interest in the real property collateral after the notice of non-judicial foreclosure is recorded have knowledge of its existence and contents. If a notice of non-judicial foreclosure is not recorded, a foreclosure under this Subchapter is void.

(c) Except as otherwise provided in subsection (d), a foreclosing creditor shall give a notice of non-judicial foreclosure to each of the following persons no later than five days after recording the notice

of non-judicial foreclosure pursuant to subsection (b) if the person can be identified as of the time the notice of non-judicial foreclosure is recorded:

- (1) Any person that the foreclosing creditor knows is a debtor;
- (2) Any person specified by a debtor in the security instrument to receive notice on the debtor's behalf;
- (3) Any person shown by the public records in the Office of the Recorder of Deeds to be an interest holder in the real property collateral;
- (4) Any person the foreclosing creditor knows is an interest holder in the real property collateral; and
- (5) Any person that has recorded in the public records in the Office of the Recorder of Deeds a request for notice of non-judicial foreclosure satisfying the requirements of Section 555.

(d) If, after recording the notice of non-judicial foreclosure, the foreclosing creditor acquires knowledge of an interest holder whose interest existed at the time the notice of non-judicial foreclosure was recorded, the foreclosing creditor shall give a notice of non-judicial foreclosure to that interest holder no later than five days after acquiring the knowledge.

(e) A foreclosing creditor, within ten (10) days before or after recording a notice of non-judicial foreclosure, shall affix a conspicuous sign on the real property collateral stating that foreclosure has been commenced and identifying the foreclosing creditor.

(f) An original notice of non-judicial foreclosure is ineffective if given after the expiration of the period of limitation for foreclosure of a security interest in real property by judicial proceeding.

SECTION 554. NOTICE OF NON-JUDICIAL FORECLOSURE; CONTENT.

(a) The heading of a notice of non-judicial foreclosure must be conspicuous and must contain the following:

**"NOTICE OF NON-JUDICIAL FORECLOSURE.
YOU ARE HEREBY NOTIFIED THAT YOU MAY LOSE YOUR
RIGHTS TO CERTAIN PROPERTY.
READ THIS NOTICE IMMEDIATELY AND CAREFULLY."**

(b) A notice of non-judicial foreclosure must contain:

- (1) A statement that the foreclosing creditor is commencing foreclosure;
- (2) A statement that the foreclosure will terminate the rights in the collateral of the person given the notice of non-judicial foreclosure unless the foreclosing creditor elects to give a subsequent notice of preservation of interest to that person pursuant to Section 556;
- (3) The date of the notice, the name of the owner of the collateral as identified in the security instrument, a description of the real property collateral as stated in the security instrument, the interest in or portion of the collateral being foreclosed, a description of any personal property collateral to be included in the foreclosure, and, at the secured creditor's option, the street address of the real property collateral, if any;

- (4) The recording data for the security instrument;
- (5) A statement that a default exists under the security instrument and the facts establishing with particularity the default;
- (6) a statement that the foreclosing creditor has accelerated or, by virtue of the notice, is accelerating the due date of the principal amount owing on the secured obligation, making that amount immediately due, or a statement that the foreclosing creditor elects not to accelerate the due date;
- (7) A statement that the collateral may be redeemed from the security interest by payment or performance of the obligation in full before foreclosure, the amount to be paid or other action necessary to redeem, including a daily amount that will allow calculation of the total balance owed as of future dates, and an estimate of any further amount the foreclosing creditor anticipates expending to protect the collateral;
- (8) If applicable, a statement:
 - (A) That the debtor may request a meeting with a representative of the foreclosing creditor to object to the foreclosure as provided by Section 556;
 - (B) That the debtor may be advised or assisted by another person at the meeting; and
 - (C) Of the last date on which the request must be received by the foreclosing creditor; and
- (9) the name, physical and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual or, if the foreclosing creditor is not an individual, the name, physical and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom a person may communicate for further information concerning the foreclosure.

SECTION 555. REQUEST FOR NOTICE OF NON-JUDICIAL FORECLOSURE.

(a) Any person provided in Section 553, subsection (c), items (2) – (4) may record in the Office of the Recorder of Deeds a request for notice of non-judicial foreclosure of a recorded security instrument. The request must state:

- (1) The recording data for the security instrument;
- (2) The names of the parties to the security instrument;
- (3) The name and mailing address of the person requesting notice of non-judicial foreclosure; and
- (4) A legally sufficient description of the real property collateral affected by the security instrument.

(b) A person that records a request under subsection (a) before a notice of non-judicial foreclosure is recorded is entitled to be given notice of non-judicial foreclosure under Section 553. Recording a request does not affect the title to the real property collateral and does not impute knowledge to any person of an interest in the real property collateral held or claimed by the person requesting notice. A person that records a request for notice under this Section may subsequently record an amendment withdrawing the request or supplementing or correcting the person's name, address, or other information

in the request. An amendment is not effective against a foreclosing creditor unless it is recorded before the recording of the notice of non-judicial foreclosure.

(c) If a foreclosure is completed and a person that recorded a proper request under subsection (a) was not given timely notice of non-judicial foreclosure, the person is entitled to recover \$500 from the foreclosing creditor. No other remedy may be granted or sanction imposed against the foreclosing creditor on behalf of the person for failure to give timely notice of non-judicial foreclosure under this Section.

SECTION 556. MEETING TO OBJECT TO FORECLOSURE.

(a) A debtor may request a meeting to object to a foreclosure. The request must be made by a notice received by the foreclosing creditor within thirty (30) days after the notice of non-judicial foreclosure is given to the debtor.

(b) If the foreclosing creditor receives a timely request for a meeting, the foreclosing creditor or a responsible representative of the foreclosing creditor shall schedule and attend a meeting with the debtor requesting it at a mutually agreeable time. The foreclosure may not be completed until the meeting is held or the debtor requesting the meeting fails without reasonable cause to appear at the scheduled meeting. The representative may be an employee, agent, servicer, or attorney of the foreclosing creditor. The meeting may be held in person or by telephone, video conferencing, or other reasonable means at the election of the foreclosing creditor. If the meeting is held in person, it must be held within the judicial district in which the real property collateral is located unless the debtor and the creditor or representatives mutually agree on a different location. If the foreclosing creditor receives requests from more than one debtor, the creditor or representative may attempt to arrange a consolidated meeting. The debtors requesting meetings shall cooperate with the foreclosing creditor's effort to do so.

(c) A meeting held pursuant to this Section is informal, and the rules of evidence do not apply. The parties may be represented by legal counsel, and the debtor may be advised or assisted by another person to the meeting. Documents that provide evidence of the grounds for foreclosure must be available to the foreclosing creditor or representative and provided to the debtor at or before the meeting. The creditor or representative shall consider the objections to foreclosure stated by the debtor. No later than ten (10) days after the meeting, the creditor shall give to each debtor who requested the meeting a written statement indicating whether the foreclosure will be discontinued or will proceed and the reasons for the determination. Neither the objections to foreclosure stated by the debtor nor the reasons stated by the creditor or representative preclude any person from raising those nor other grounds for objecting to or supporting foreclosure in any judicial proceeding. A statement or representation made by a person at the meeting may not be introduced as evidence in any judicial proceeding. Each party bears its own expenses in connection with the meeting.

(d) Neither the foreclosing creditor nor its representative is subject to liability for making a determination that is adverse to a debtor who requested a meeting under this Section. A debtor is not subject to liability for requesting or attending a meeting under this Section.

SECTION 557. PERIOD OF LIMITATION FOR FORECLOSURE. The time of foreclosure may not be less than ninety (90) days nor more than one (1) year after an original notice of non-judicial foreclosure is recorded under Section 553 and not less than thirty (30) days after any subsequent notice of non-judicial foreclosure is recorded. The one (1) year period of limitation may be extended by agreement of the foreclosing creditor and all persons to which notice of non-judicial foreclosure was required to be given, other than persons having interests that have been preserved from foreclosure by a notice of preservation pursuant to Section 560. All periods provided in this Section shall be tolled for not more than one hundred eighty (180) days while a court order expressly enjoining or staying the foreclosure is in

effect and for the period of, and for forty five (45) days after the end of, an automatic stay under Section 362 of the federal Bankruptcy Act (11 U.S.C. Section 101 et. seq.).

SECTION 558. JUDICIAL SUPERVISION OF FORECLOSURE. An aggrieved person may commence a judicial proceeding for a violation of this Subchapter or of other law or principle of equity in the conduct of the foreclosure. The court may issue any order within the authority of the court in a foreclosure of a mortgage by judicial action, including injunction or postponement of the foreclosure.

SECTION 559. REDEMPTION. Notwithstanding the provision of Title 5, Chapter 43, Virgin Islands , a person having the right to redeem collateral from a security interest subject to the provisions of this Subchapter, may not redeem after the time of foreclosure. Upon request a foreclosing creditor under this Subchapter shall cooperate with a person that attempts to redeem the collateral from the security interest before the time of foreclosure by promptly providing information concerning the amount due or performance required to redeem.

SECTION 560. NOTICE OF PRESERVATION. A foreclosing creditor may give to any interest holder a notice stating that the interest of the recipient in the collateral will be preserved from and will not be affected by the foreclosure. The notice must be given no later than thirty (30) days before the time of foreclosure unless a later notice is authorized by a specific provision of this Subchapter. A notice complying with this Section preserves the interest from termination by foreclosure. A foreclosing creditor that gives a notice of preservation under this Section may not later revoke the notice or foreclose against the interest of the person to which notice of preservation was given.

PART 3. FORECLOSURE SALE

SECTION 561. FORECLOSURE. To foreclose pursuant to this Subchapter, the secured creditor must comply with the requirements of this Subchapter.

SECTION 562. ADVERTISEMENT OF SALE. After giving notice of non-judicial foreclosure, a foreclosing creditor shall advertise a foreclosure sale pursuant to this Subchapter in a manner that complies with Title 5, Section 484, Virgin Islands Code; provided that a copy of the advertisement shall be provided to each person entitled to copy of the notice of non-judicial foreclosure pursuant to Section 553, subsection (c).

SECTION 563. ACCESS TO COLLATERAL. If a creditor foreclosing by auction has authority to grant access to the real property collateral, the creditor shall reasonably accommodate a person that contacts the creditor, expresses an interest in bidding at the foreclosure auction, and requests an opportunity to inspect the collateral.

SECTION 564. LOCATION AND TIME OF SALE. A foreclosure sale pursuant to this Subchapter shall be conducted at any time between 9:00AM and 4:00PM in the judicial district in which the real property collateral is located.

SECTION 565. FORECLOSURE OF TWO OR MORE PARCELS.

(a) Collateral consisting of two or more parcels of real property may be foreclosed by sale separately or in combination as provided in the security instrument. If the security instrument does not specify the manner of sale of two or more parcels, the auction may be conducted:

(1) By a separate auction of each of the parcels; or

(2) If at the time notice of non-judicial foreclosure is recorded two (2) or more parcels are contiguous, being used in a unitary manner, part of a unitary plan of development, or operated under integrated management:

(A) By combining the parcels in a single auction; or

(B) By conditionally offering the parcels at auction both in combination and separately and accepting the higher of the two (2) aggregate bids.

(b) If collateral consisting of two (2) or more parcels of real property is not made the subject of a single auction, the foreclosing creditor shall discontinue sales of parcels or combinations of parcels when the total amount of bids received is sufficient to pay the secured obligation and the expenses of foreclosure.

SECTION 566. POSTPONEMENT OF SALE.

(a) The person conducting a foreclosure sale under this Subchapter may postpone the auction for any cause the foreclosing creditor considers appropriate. Announcement of the postponement and the time and location of the rescheduled foreclosure sale must be given orally at the place and time advertised for commencement of the foreclosure sale. No other advertisement or notice of the postponed time and place of the foreclosure sale is required. A foreclosure sale may be postponed more than once, but each postponement may be for not more than thirty (30) days.

(b) If a foreclosure sale cannot be held at the time stated in the advertisement provided in Section 562 hereof because of an automatic stay under Section 362 of the federal Bankruptcy Act (11 U.S.C. Section 101, et seq.) or an express stay order issued by a court, the foreclosing creditor may reschedule the foreclosure sale. The rescheduled foreclosure sale must be advertised and a copy of the advertisement given to each person entitled to a copy as provided by Section 553, subsection (c).

SECTION 567. CONDUCT OF SALE.

(a) A foreclosure sale shall be conducted by a person and at a public location designated by the foreclosing creditor in accordance with the provisions of this Subchapter.

(b) The person conducting the auction, before commencing the auction may verify that a person intending to bid has the present ability to make the deposit stated in the advertisement, but may not disclose the amount that a bidder is prepared to deposit.

SECTION 568. DEPOSIT BY SUCCESSFUL BIDDER. Immediately after the foreclosure sale is completed, the successful bidder, if other than the foreclosing creditor or the creditor's agent, shall pay a deposit to the person conducting the auction. The deposit must be at least ten percent (10%) of the amount of the bid or such lower amount as the advertisement of auction stated would be accepted. The deposit must be in the form of cash, bank check, or such other form of payment as was stated in the advertisement of the foreclosure sale to be acceptable or is acceptable to the person conducting the auction.

SECTION 569. PAYMENT OF REMAINDER OF BID.

(a) The successful bidder at foreclosure sale shall pay the remainder of the bid to the foreclosing creditor within ten (10) days after the date of completion of the sale, together with the fees for the recording of the deed and affidavit with the Office of the Recorder of Deeds pursuant to Section 573, subsection (a).

(b) If payment of the remainder of the bid and fees are timely made, the foreclosing creditor shall complete the foreclosure pursuant to Section 572.

(c) If payment of the remainder of the bid is not timely made, the foreclosing creditor shall discontinue the foreclosure pursuant to Section 571 and the deposit of the successful bidder is forfeited and must be distributed by the foreclosing creditor pursuant to Section 574. The defaulting bidder is not subject to any other liability on account of the default.

SECTION 570. FORECLOSURE AMOUNT; DISTRIBUTION OF PROCEEDS. If the foreclosure sale is completed pursuant to Section 572, the highest amount bid at the foreclosure sale is the foreclosure amount. The foreclosure amount must be applied and distributed by the foreclosing creditor pursuant to Section 574.

PART 4. DISCONTINUANCE AND COMPLETION OF FORECLOSURE; RIGHTS AFTER FORECLOSURE

SECTION 571. DISCONTINUANCE OF FORECLOSURE.

(a) A foreclosing creditor may discontinue foreclosure under this Part at any time before the completion of the foreclosure sale in the case of a foreclosure by auction.

(b) If a foreclosing creditor discontinues foreclosure, the creditor shall give notice to the persons to whom notice of non-judicial foreclosure was required to be given under Section 553, subsection (c), advising them that the foreclosure has been discontinued and whether the foreclosing creditor will:

- (1) Commence another foreclosure sale by the same method pursuant to a new notice of non-judicial foreclosure;
- (2) Commence foreclosure by judicial proceeding pursuant to Subchapter I of this Chapter; or
- (3) Abandon foreclosure.

(c) If a notice given by a foreclosing creditor under subsection (b)(1) includes all elements required for a notice of non-judicial foreclosure under Sections 553 and 554, it constitutes a new notice of non-judicial foreclosure and no additional notice of non-judicial foreclosure is necessary to pursue a further foreclosure under this Subchapter.

SECTION 572. COMPLETION OF FORECLOSURE; DEED TO SUCCESSFUL BIDDER; AFFIDAVIT; TIME OF FORECLOSURE.

(a) To complete a foreclosure sale, the foreclosing creditor shall:

- (1) Execute, deliver, and record in the Office of the Recorder of Deeds a deed without warranty of title, execute and deliver a bill of sale or other appropriate document of transfer with respect to personal property, if applicable, and execute and deliver any other documents that are necessary in order for the deed to be recorded, transferring the collateral to or as directed by the successful bidder in the foreclosure sale.
- (2) Execute and record in the Office of the Recorder of Deeds an affidavit containing:
 - (A) The recording data for the security instrument;
 - (B) Identification of the foreclosing creditor and the debtor;

- (C) A legally sufficient description of the real property collateral;
- (D) The recording data for the notice of non-judicial foreclosure;
- (E) Identification of the persons to which notice of non-judicial foreclosure was given and the recording data for documents reflecting their interests in the collateral;
- (F) A statement that no person entitled to object to the foreclosure made a timely objection, or identifying any person that made a timely objection and stating whether the person's interest was discharged by the secured creditor or was preserved from the effect of the foreclosure by the giving of a notice of preservation pursuant to Section 560;
- (G) Identification of any additional persons to which notices of preservation under Section 560 were given;
- (H) A statement that the foreclosing creditor has complied with all provisions of this Subchapter for a valid foreclosure; and
- (I) Identification of the person acquiring title to the collateral by virtue of the foreclosure.

(b) The time of recording of the deed in the Office of the Recorder of Deeds is the time of foreclosure.

SECTION 573. TITLE TRANSFERRED BY FORECLOSURE. Compliance with Section 572, subsection (a), item (1) transfers, to the persons identified in the deed or document of transfer, the title to the collateral held by the person that granted the security interest, subject only to:

- (1) Interests in the collateral having priority over the security interest foreclosed;
- (2) Interests of persons entitled to notice of non-judicial foreclosure under Section 553, subsection (c) that were not given notice of non-judicial foreclosure; and
- (3) Interests that were preserved from foreclosure by notice of preservation given pursuant to Section 560.

SECTION 574. APPLICATION OF PROCEEDS OF FORECLOSURE.

(a) After receiving proceeds of a sale but before applying them, the foreclosing creditor may invest them in a reasonable manner. Within ten (10) days after the time of foreclosure or such longer time as may be permitted by court order, the foreclosing creditor shall apply and distribute the foreclosure amount and any investment earnings thereon in the following order:

- (1) To pay or reimburse the expenses of foreclosure;
- (2) To pay the obligation secured by the foreclosed security instrument;
- (3) To pay, in the order of their priority, the amounts secured by all liens terminated by the foreclosure; and
- (4) To the person that owned the collateral at the time of foreclosure.

(b) If the foreclosing creditor, in applying the proceeds of the sale, acts in good faith and without actual knowledge of the invalidity or lack of priority of the claim of a person to which distribution is made, the foreclosing creditor is not liable for an erroneous distribution. The foreclosing creditor may maintain an action in the nature of interpleader for an order directing the order of distribution of the proceeds of the sale.

SECTION 575. CONCLUSIVE EFFECT OF FORECLOSURE. Recording of the notice of non-judicial foreclosure pursuant to Section 553, subsection (b) and recording of the documents pursuant to

Section 573 conclusively establishes compliance with this Subchapter in favor of purchasers of the collateral in good faith for value.

SECTION 576. POSSESSION AFTER FORECLOSURE. If the rights acquired by a person by a foreclosure under this Subchapter include the right of possession, the person may gain possession of the real property by a forcible entry, detainer and restitution of property action pursuant to Title 28, Section 782, Virgin Islands Code. Other appropriate judicial proceeding may be applied but creditor may not dispossess persons in possession of the real property without a judicial order or judgment.

SECTION 577. ENTITLEMENT TO DEFICIENCY.

(a) Except as otherwise provided in subsection (b), a creditor that has completed a foreclosure under this Subchapter may obtain a judgment for a deficiency, as determined by Section 578, against a debtor that is liable for the secured debt owed to the creditor.

(b) A debtor is not liable for a deficiency after a foreclosure under this Subchapter if the person seeking the deficiency waived the right to a deficiency.

(c) An action to recover a deficiency against a debtor must be commenced within ninety (90) days after the time of foreclosure.

SECTION 578. DETERMINING AMOUNT OF DEFICIENCY.

(a) Subject to subsections (b) and (c), the deficiency to which a foreclosing creditor is entitled after a foreclosure under this Subchapter is the balance remaining, if any, after subtracting the amount paid or applied on behalf of the creditor pursuant to Section 575, subsection (a), items (1) and (2) from the balance owing on the secured obligation to the creditor, including principal, interest, and legally recoverable fees and charges.

(b) In an action by a foreclosing creditor for a deficiency, a debtor against whom the action is filed may offer proof that the foreclosure amount was less than ninety percent (90%) of the fair market value of the collateral as of the time of the foreclosure sale.

(c) If the court, after a hearing on the proof offered pursuant to subsection (b), finds that the foreclosure amount was less than ninety percent (90%) of the fair market value of the collateral, the court shall substitute ninety percent (90%) of the fair market value of the collateral for the foreclosure amount for the purpose of determining the deficiency pursuant to subsection (a)."

SECTION 2. Title 28, Section 531, subsection (b), Virgin Islands Code is amended to read as follows:

"(b) Prior to the entry of any judgment of foreclosure pursuant to this Subchapter upon a homestead which is the actual abode of and owned by the residential debtor or their spouse, the parties must provide the Court with evidence that a good faith effort was made to settle the matter through mediation. The type and form of the mediation report shall be prescribed by the Superior Court of the Virgin Islands. The requirements of this subsection shall not apply where: (i) default has been entered against a party under the applicable rules of civil procedure for failure to appear or otherwise defend an action for foreclosure; (ii) the parties agree, stipulate, confess or otherwise consent to the entry of a judgment of foreclosure; or (iii) upon motion and a showing of good cause, the Court finds that mediation will be futile."

SECTION 3. (a) Section 1 of this Act shall take effect on the 1st day of the month, ninety (90) days after enactment hereof and shall not apply to any proceedings in court pending upon enactment hereof; provided that an action for non-judicial foreclosure may be commenced upon any applicable debt entered into by a debtor and creditor prior to the effective date hereof provided notice of such procedure is provided in the loan documentation for the applicable debt being foreclosed.

(b) Section 2 of this Act applies to applicable actions for foreclosure pending as of January 1, 2021 or filed subsequent thereto.

DRAFT

BILL NO. 34-0371

Thirty-Fourth Legislature of the Virgin Islands

November 14, 2022

An Act amending title 22 Virgin Islands Code relating to insurers becoming members of a Federal Home Loan Bank and matters relating thereto

PROPOSED BY: Senator Donna A. Frett-Gregory by Request of the Governor

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code is amended in the following instances:

(a) In chapter 1, add section 6a. to read as follows:

“§6a. Federal Home Loan Bank and Insurer- member defined

(a) “Federal Home Loan Bank”, when used in this title means an institution chartered under the Federal Home Loan Bank Act of 1932, 12 U.S.C.§§ 1421, et seq. (the “Federal Home Loan Bank Act”).

(b) “Insurer-member” when used in this title means an Insurer that is a member of a Federal Home Loan Bank.”

(b) In chapter 9, add section 230c. that reads as follows:

“§230c. Membership in Federal Home Loan Bank

1 (a) Insurers duly organized under the laws of any State or of the United States,
2 eligible for membership, may become a member of a Federal Home Loan Bank and upon
3 becoming a member, may:

4 (1) purchase stock in; obtain advances from; sell loans to; pledge collateral
5 to; and perform such acts which are necessary and required to make available to it
6 all the advantages and privileges offered by such Federal Home Loan Bank to the
7 extent provided by and in accordance with the Federal Home Loan Bank Act; and

8 (2) invest in the debt obligations of the Federal Home Loan Banks or of the
9 Federal Home Loan Bank of New York or its legal successor.

10 (b) For purposes of this section, the term “State”, in addition to the States of the
11 United States, includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands,
12 American Samoa, and the Commonwealth of the Northern Mariana Islands.”

13 (c) In chapter 10, section 246, strike “All” at the beginning of the first sentence and
14 insert “Except as provided in section 1254 of this title, all”.

15 (d) In chapter 23, section 553, insert “, to ownership of shares of stock in or advances
16 from a Federal Home Loan Bank” after the second occurrence of “United States” in the second
17 sentence.

18 (e) Chapter 51 is amended in the following instances:

19 (1) Section 1254 is amended by:

20 (A) Adding a new subsection (b) that reads:

21 “(b) The Commissioner has the authority to enter into such contracts
22 as may be needed for the execution of the order of rehabilitation and to affirm
23 or disavow any contract to which the insurer is a party; except that the
24 Commissioner does not have the authority to disavow, reject, or repudiate a

1 Federal Home Loan Bank security agreement, pledge, collateral or guarantee
2 agreement, or other similar arrangement or credit enhancement relating to a
3 security agreement to which a Federal Home Loan Bank is a party, except if
4 it was made with actual intent to hinder, delay, or defraud either existing or
5 future creditors.”; and

6 (B) Re-designating the affected subsections accordingly.

7 (2) In section 1256, add subsections (c) through (f) that read as follows:

8 “(c) Following the appointment of the Commissioner, as administrator,
9 rehabilitator, conservator or liquidator for an Insurer-member, and upon request of
10 the Commissioner, the Federal Home Loan Bank must, within ten days of the
11 request, provide a process and establish the timing for:

12 (1) The release of any collateral held by the Federal Home Loan Bank
13 that exceeds the amount that is required to support the secured obligations of
14 the Insurer-member and that remains after any repayment of loans, as
15 determined under the applicable agreements between the Federal Home Loan
16 Bank and the Insurer-member;

17 (2) The release of any collateral remaining in the Federal Home Loan
18 Bank's possession following repayment in full of all outstanding secured
19 obligations of the Insurer-member;

20 (3) The payment of fees owed by the Insurer-member and the
21 operation, maintenance, closure, or disposition of deposits and other accounts
22 of the Insurer-member, as mutually agreed upon by the Commissioner and
23 the Federal Home Loan Bank; and

1 (4) Any possible redemption or repurchase of Federal Home Loan
2 Bank stock or excess stock of any class that an Insurer-member is required to
3 own.

4 (d) Upon the request of the Commissioner, as administrator, rehabilitator,
5 conservator or liquidator of an Insurer-member, the Federal Home Loan Bank must
6 provide any available options for the Insurer-member to renew or restructure an advance
7 to defer associated prepayment fees; subject to market conditions, the terms of the
8 advances outstanding to the Insurer-member, the applicable policies of the Federal Home
9 Loan Bank, and compliance with the Federal Home Loan Bank Act and corresponding
10 regulations.

11 (e) The enumeration of the powers and authority of the Commissioner in this title
12 is not construed as a limitation upon the Commissioner and does not exclude the right to
13 take other actions or engage in other acts not specifically enumerated or otherwise
14 provided for to the extent necessary or appropriate for the accomplishment of or in aid of
15 the liquidation purposes.

16 (f) Notwithstanding subsections (c), (d) and (e) of this section and any other
17 provision of this title, a Federal Home Loan Bank shall not be enjoined, or prohibited
18 from exercising or enforcing any right or cause of action regarding collateral pledged
19 under a security agreement or under any pledge, collateral or guarantee agreement, or
20 other similar arrangement or credit enhancement relating to a security agreement to which
21 the Federal Home Loan Bank is a party; except that a transfer may be voided under this
22 section if it was made with actual intent to hinder, delay, or defraud either existing or
23 future creditors.”

24 (f) In section 1276, add subsections (d) and (e) that read as follows:

1 FHLB member insurance companies are those insurance companies that meet the specific
2 financial condition and other eligibility requirements. This legislation confirms that Virgin
3 Islands insurers may become members of a FHLB.
4

5 In the event of the bankruptcy of a bank (“receivership”), in accordance with existing
6 federal banking law, FHLB loans are afforded a special protection. Under federal law regarding
7 federally insured depositors, funding provided by FHLBs is not subject to “stay” and voidable
8 transfer provisions.
9

10 However, the insolvency of an insurer is not governed by federal law, but rather, by the
11 insurance insolvency statutes in each of the states and territories. During 2012 and 2013, a
12 subgroup of the National Association of Insurance Commissioners (NAIC) conducted a study
13 of the legislation proposed by the FHLB including the FHLB’s views as well as the views of
14 state insurance regulators and receivers. The study resulted in a report to the NAIC
15 Receivership and Insolvency (E) Task Force dated November 18, 2013 (the “NAIC Report”),
16 setting forth specific recommendations for statutory language to amend the stay and voidable
17 preference provisions in state insurance insolvency statutes. To date, 22 states have adopted
18 statutes implementing the recommendations set forth in the NAIC Report.
19

20 In the Virgin Islands, insurance company insolvencies are governed by title 22 of the
21 Virgin Islands Code. The purpose of this legislation is to amend title 22 of the Virgin Islands
22 Code in order to align the Virgin Islands law with the federal standards for insurance companies
23 recommended in the NAIC Report. Specifically, this legislation modifies the insolvency legal
24 provisions of Virgin Islands insurance companies with respect to “stays” and “voidable
25 transfers” with respect to FHLBs exclusively and only with regard to insurance companies that
26 are members of an FHLB.
27

28 These amendments would prevent the Commissioner of Insurance as administrator,
29 rehabilitator or liquidator, from overriding collateral preferences pledged to FHLBs in an
30 insolvency of an insurance company, except in those cases where such preferences have been
31 fraudulently obtained. This would allow FHLBs to lower collateral requirements, which may
32 lead to an increase in FHLB transactions with member insurance companies. These changes
33 only apply to FHLB insurer members and will only apply to guarantees pledged in the ordinary
34 course of business by FHLB member insurance companies. They do not prevent the
35 administrator, rehabilitator or the liquidator from imposing suspensions or canceling transfers
36 in cases of fraud or misconduct.
37

38 Additionally, the amendments provide for an orderly process for the FHLBs to work with
39 the Commissioner, as administrator, conservator, rehabilitator or liquidator, to assist troubled
40 insurance companies and act as a resource to assist the trustee with an orderly liquidation or
41 rehabilitation of the troubled insurance company, including facilitating options available for the
42 troubled insurance company to renew or restructure advances and possible redemption or
43 repurchase of shares of the FHLBs. In the event of potential insolvency, FHLBs have been the
44 only institutions willing and able to provide liquidity to troubled insurance companies.
45

46 This legislation provides certainty regarding the rights and obligations of the FHLB in an
47 insolvency of an insurer member and may lower the collateral requirements of the FHLB for

1 those insurance companies authorized to conduct business in the Virgin Islands who are
2 members of FHLBs.

3
4 This legislation does not create a special creditor preference for FHLBs. The standards
5 of secured loans and the perfection of collateral under the Virgin Islands Uniform Commercial
6 Code (“UCC”) have not changed. The order of distribution of assets of the insolvent insurer
7 has not been amended. This legislation prevents the administrator from retaining collateral that
8 was awarded to the FHLB under valid collateral agreements, in the ordinary course of business,
9 and that was perfected by the FHLB under the UCC.

10
11 The Commissioner also benefits because the bill provides for a coordinated dialogue
12 between the Commissioner as administrator, and the FHLB to maintain the necessary liquidity
13 for troubled insurance companies. This can reduce the risk of ultimate bankruptcy of the
14 insurance company under receivership and may provide the Commissioner as administrator
15 with additional time and options to develop strategies that may save the troubled insurer from
16 liquidation or reduce receivership costs and costs to the guaranty associations and the insurance
17 purchasing public.

18
19 Insurance companies that are members of a FHLB also benefit from the bill since the
20 FHLB would be in a better position to provide more favorable loan terms to member insurers.
21 The types of collateral that may be used for advances could also be expanded. An insolvent
22 member insurance company would benefit because the bill requires the FHLB to work with the
23 trustee to assist, to the extent possible, in improving the insurer’s insolvency condition.

24
25 Virgin Islands insurance companies have the statutory authority to become members of
26 the Federal Home Loan Bank pursuant to 12 U.S.C.S. § 1424, which provides that eligible
27 insurance companies may become members of an FHLB. 9 V.I.C. §282 authorizes associations
28 to become members of the Federal Home Loan Bank system and receive the benefits of FHLB
29 membership. However, the term “Associations” as used in 9 V.I.C. §282 refers to cooperative
30 savings and loan associations only and does not cover insurance companies. Title 22 of the
31 Virgin Islands Code does not contain any definition of, references to, or authorizations of
32 insurance company membership with a FHLB. Since title 22 of the Virgin Islands Code is
33 silent as to membership with an FHLB, a definition of FHLB is added in chapter 1 as section
34 6a., and a new section is added to chapter 9 as section 230c. to explicitly authorize insurance
35 companies to become members of an FHLB and exercise all rights and powers available to
36 members of an FHLB, and defines the permitted business of an Insurer with respect to its
37 membership with an FHLB.

38
39 With respect to insolvency and receivership proceedings, title 22 of the Virgin Islands
40 Code, chapter 51 outlines rehabilitation and liquidation powers, orders and procedures. While
41 the Commissioner’s abilities, in the event of rehabilitation or liquidation of an insolvent insurer,
42 are sweeping, there is nothing specifically addressing or exempting an FHLB from stays and
43 voidable transfers for collateral pledged to an FHLB by an insolvent insurance company
44 member or to establish an orderly process for an FHLB to work with a receiver. In order to
45 clarify voidable preference and stays with respect to an FHLB, consistent with NAIC guidance,
46 sections 246, 553, 1254, 1256 and 1276 of title 22 of the Virgin Islands Code are amended.

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