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# A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the number of  
2 mortgage foreclosures of residential property has reached an  
3 alarming level. The legislature acknowledges that this  
4 situation is not unique to Hawaii and is part of a nationwide  
5 economic downturn and resulting upheaval throughout the home  
6 lending industry. Because of these concerns, there have been  
7 numerous measures proposed during the 2010 legislative session  
8 to address foreclosure-related issues. However, it is unclear  
9 whether any of these approaches will improve the conditions  
10 relating to foreclosures or improve the current foreclosure  
11 laws.

12           The legislature further finds that a comprehensive  
13 evaluation of Hawaii's mortgage foreclosure laws is necessary  
14 before the enactment of meaningful legislation that, on balance,  
15 addresses the concerns of both borrowers and lenders involved in  
16 mortgage foreclosures without further overburdening the courts.

17           The purpose of this Act is to create a mortgage foreclosure  
18 task force to conduct an extensive analysis of all factors



1 affecting mortgage foreclosures in the state and to recommend  
2 appropriate legislation.

3 SECTION 2. (a) There is established a mortgage  
4 foreclosure task force within the department of commerce and  
5 consumer affairs for administrative purposes. The director of  
6 commerce and consumer affairs shall select the initial members  
7 of the task force and shall invite at least one member from each  
8 of the following:

- 9 (1) The department of commerce and consumer affairs'  
10 office of consumer protection;
- 11 (2) A mortgage counseling organization approved by the  
12 United States Department of Housing and Urban  
13 Development, preferably with expertise in consumer  
14 credit counseling;
- 15 (3) The Legal Aid Society of Hawaii;
- 16 (4) The Hawaii Financial Services Association;
- 17 (5) The Hawaii Bankers Association;
- 18 (6) The Mortgage Bankers Association of Hawaii;
- 19 (7) The Hawaii Credit Union League;
- 20 (8) The Hawaii Council of Associations of Apartment  
21 Owners;



1 (9) The Hawaii State Bar Association Collection Law  
2 Section;

3 (10) The Hawaii State Bar Association Bankruptcy Law  
4 Section or the Bankruptcy Court of the United States  
5 District of Hawaii; and

6 (11) The Hawaii state judiciary.

7 The members of the mortgage foreclosure task force shall elect a  
8 chairperson from among its membership. The chairperson of the  
9 task force shall seek to maintain a balanced representation of  
10 interests and may select additional task force members at the  
11 chairperson's discretion.

12 (b) The mortgage foreclosure task force shall undertake a  
13 study to develop both general and specific policies and  
14 procedures necessary to improve the manner in which mortgage  
15 foreclosures are conducted in the state. In particular, the  
16 task force shall consider the following areas for possible  
17 improvements:

18 (1) The adequacy of notice given to mortgagors of  
19 available mortgage counseling programs and the optimal  
20 timing for such notification and counseling;



- 1           (2) The availability of loan documentation to mortgagors  
2           from mortgagees prior to and during the foreclosure  
3           process;
- 4           (3) The establishment of statutory bidding thresholds for  
5           properties sold via foreclosure;
- 6           (4) The statutory timeline for power-of-sale foreclosures;
- 7           (5) Further regulation of distressed property consultants;  
8           and
- 9           (6) Revisions to part II of chapter 667, Hawaii Revised  
10           Statutes, to make it a viable vehicle for power-of-  
11           sale foreclosures.
- 12           (c) In undertaking the study, the mortgage foreclosure  
13 task force may take into account any of the following factors:
- 14           (1) Existing regulation, on both the state and federal  
15           levels;
- 16           (2) The state of the national and local economy, mortgage  
17           loan default rates, and unemployment rates;
- 18           (3) Local borrowing and lending practices vis-à-vis  
19           mainland practices;
- 20           (4) Standard mortgage loan qualifications;
- 21           (5) Language barriers and other cultural factors unique to  
22           this state;



- 1           (6) The extent to which predatory mortgage lending, abuse
- 2           of collection procedures, and otherwise unfair,
- 3           fraudulent, and deceptive practices have impacted
- 4           mortgagors;
- 5           (7) The effect of various mortgage loan terms, interest
- 6           rates, fees, risk-based pricing, single-premium credit
- 7           insurance, financing, and payment structures;
- 8           (8) The extent to which mortgage loan terms and conditions
- 9           are disclosed to and understood by borrowers;
- 10          (9) A borrower's ability to negotiate mortgage loan terms
- 11          and prices;
- 12          (10) The role of mortgage servicing agents and their
- 13          practices;
- 14          (11) The availability, consumer knowledge, and use of
- 15          mortgage counseling;
- 16          (12) The availability, consumer knowledge, and use of loan
- 17          modification processes;
- 18          (13) The length of time and expense associated with
- 19          completing the foreclosure process;
- 20          (14) The extent to which mortgagees provide mortgagors with
- 21          mortgage documents when requested;



- 1 (15) The impact on the state's judicial system and the  
2 timely resolution of foreclosure disputes;
- 3 (16) The extent to which mortgage foreclosures go  
4 uncontested;
- 5 (17) The proof required to establish standing for  
6 foreclosing mortgagees;
- 7 (18) Association and maintenance fees and other costs borne  
8 by neighbor unit holders in condominium or community  
9 associations when mortgagors are in default;
- 10 (19) Abuses of the existing law by mortgagors and  
11 mortgagees;
- 12 (20) The effect of certain inefficiencies and barriers  
13 under the current law relating to foreclosures, such  
14 as serving process upon absent or deceased mortgagors;  
15 and
- 16 (21) The extent to which the above factors impact power-of-  
17 sale vis-à-vis judicial foreclosures.
- 18 (d) The mortgage foreclosure task force shall analyze the  
19 effectiveness and any defects of the foreclosure procedures  
20 currently set in statute for both judicial and power-of-sale  
21 foreclosures. In this analysis, the task force:



- 1 (1) May consider and recommend alternative procedures for  
2 timeshare property;
- 3 (2) May consider and recommend alternative procedures for  
4 foreclosures sought by junior lien holders such as  
5 condominiums, co-op apartments, and community  
6 associations collecting maintenance fees;
- 7 (3) May propose measures to clarify the application of  
8 chapter 667, Hawaii Revised Statutes, to other  
9 property statutes;
- 10 (4) Shall comment on the extent to which existing law does  
11 or does not comply with state and federal  
12 constitutional due process guarantees;
- 13 (5) Shall comment on any effect proposed legislative  
14 changes will have on borrowers who are current on  
15 their mortgage loans; and
- 16 (6) Shall seek to maintain and not erode existing consumer  
17 protections.
- 18 (e) The mortgage foreclosure task force shall comment on  
19 the feasibility of establishing a state entity or administrator  
20 to focus on addressing the concerns of mortgagors, disseminating  
21 information, and otherwise engaging in consumer education. The



1 task force shall propose funding mechanisms to enable the  
2 operation of this entity.

3 (f) Members of the mortgage foreclosure task force shall  
4 serve without compensation and shall not be reimbursed for  
5 expenses.

6 (g) The mortgage foreclosure task force shall submit a  
7 report of its findings and recommendations, including any  
8 proposed legislation, to the legislature no later than twenty  
9 days prior to the convening of the 2011 and 2012 regular  
10 sessions, and shall participate in a joint informational session  
11 upon request of the legislature.

12 (h) The legislative reference bureau shall assist the task  
13 force in preparing its findings, recommendations, and proposed  
14 legislation; provided that the chairperson of the task force  
15 shall submit the task force's proposals to the legislative  
16 reference bureau for drafting no later than November 1, 2010 for  
17 the report to the 2011 regular session and no later than  
18 November 1, 2011, for the report to the 2012 regular session.

19 (i) The mortgage foreclosure task force shall cease to  
20 exist on June 30, 2012.

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1 SECTION 3. This Act shall take effect upon its approval.

2



**Report Title:**

Mortgage Foreclosures; Task Force

**Description:**

Establishes a task force to analyze factors affecting mortgage foreclosures in Hawaii, including relevant laws. Effective upon approval. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

