
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, to consist of at
6 least seven and no more than ten members. The initial members
7 of the task force shall be selected by the director of commerce
8 and consumer affairs and shall include one member from each of
9 the following:

- 10 (1) The department of commerce and consumer affairs'
11 office of consumer protection;
- 12 (2) A mortgage counseling organization approved by the
13 United States Department of Housing and Urban
14 Development;
- 15 (3) The Legal Aid Society of Hawaii;
- 16 (4) The Hawaii Financial Services Association;
- 17 (5) The Hawaii Bankers Association;
- 18 (6) The Hawaii Council of Associations of Apartment
19 Owners; and
- 20 (7) The Hawaii State Bar Association Collection Law
21 Section.



1 The chairperson of the task force may select additional task
2 force members at the chairperson's discretion.

3 (b) The members of the mortgage foreclosure task force
4 shall elect a chairperson from among its membership.

5 (c) The mortgage foreclosure task force shall undertake a
6 study to develop both general and specific policies and
7 procedures necessary to improve the manner in which mortgage
8 foreclosures are conducted in the state. In particular, the
9 task force shall consider the following areas for possible
10 improvements:

11 (1) The adequacy of notice given to mortgagors of
12 available mortgage counseling programs and the optimal
13 timing for such notification and counseling;

14 (2) The availability of loan documentation to mortgagors
15 from mortgagees prior to and during the foreclosure
16 process;

17 (3) The establishment of statutory bidding thresholds for
18 properties sold via foreclosure;

19 (4) The statutory timeline for power-of-sale foreclosures;

20 (5) Further regulation of distressed property consultants;

21 and



1 (6) Revisions to part II of chapter 667, Hawaii Revised
2 Statutes, to make it a viable vehicle for power-of-
3 sale foreclosures.

4 (d) In undertaking the study, the mortgage foreclosure
5 task force may take into account any of the following factors:

6 (1) Existing regulation, on both the state and federal
7 levels;

8 (2) The state of the national and local economy, mortgage
9 loan default rates, and unemployment rates;

10 (3) Local borrowing and lending practices vis-à-vis
11 mainland practices;

12 (4) Standard mortgage loan qualifications;

13 (5) Language barriers and other cultural factors unique to
14 this state;

15 (6) The extent to which predatory mortgage lending, abuse
16 of collection procedures, and otherwise unfair,
17 fraudulent, and deceptive practices have impacted
18 mortgagors;

19 (7) The effect of various mortgage loan terms, interest
20 rates, fees, risk-based pricing, single-premium credit
21 insurance, financing, and payment structures;



- 1 (8) The extent to which mortgage loan terms and conditions
- 2 are disclosed to and understood by borrowers;
- 3 (9) A borrower's ability to negotiate mortgage loan terms
- 4 and prices;
- 5 (10) The role of mortgage servicing agents and their
- 6 practices;
- 7 (11) The availability, consumer knowledge, and use of
- 8 mortgage counseling;
- 9 (12) The availability, consumer knowledge, and use of loan
- 10 modification processes;
- 11 (13) The length of time and expense associated with
- 12 completing the foreclosure process;
- 13 (14) The extent to which mortgagees provide mortgagors with
- 14 mortgage documents when requested;
- 15 (15) The impact on the state's judicial system and the
- 16 timely resolution of foreclosure disputes;
- 17 (16) The extent to which mortgage foreclosures go
- 18 uncontested;
- 19 (17) The proof required to establish standing for
- 20 foreclosing mortgagees;



- 1 (18) Association and maintenance fees and other costs borne
2 by neighbor unit holders in condominium or community
3 associations when mortgagors are in default;
- 4 (19) Abuses of the existing law by mortgagors and
5 mortgagees;
- 6 (20) The effect of certain inefficiencies and barriers
7 under the current law relating to foreclosures, such
8 as serving process upon absent or deceased mortgagors;
9 and
- 10 (21) The extent to which the above factors impact power-of-
11 sale vis-à-vis judicial foreclosures.
- 12 (e) The mortgage foreclosure task force shall analyze the
13 effectiveness and any defects of the foreclosure procedures
14 currently set in statute for both judicial and power-of-sale
15 foreclosures. In this analysis, the task force:
- 16 (1) May consider and recommend alternative procedures for
17 timeshare property;
- 18 (2) May consider and recommend alternative procedures for
19 foreclosures sought by junior lien holders such as
20 condominiums, co-op apartments, and community
21 associations collecting maintenance fees;



- 1 (3) May propose measures to clarify the application of
2 chapter 667, Hawaii Revised Statutes, to other
3 property statutes;
- 4 (4) Shall comment on the extent to which existing law does
5 or does not comply with state and federal
6 constitutional due process guarantees;
- 7 (5) Shall comment on any effect proposed legislative
8 changes will have on borrowers who are current on
9 their mortgage loans; and
- 10 (6) Shall seek to maintain and not erode existing consumer
11 protections.
- 12 (f) The mortgage foreclosure task force shall comment on
13 the feasibility of establishing a state entity or administrator
14 to focus on addressing the concerns of mortgagors, disseminating
15 information, and otherwise engaging in consumer education. The
16 task force shall propose funding mechanisms to enable the
17 operation of this entity.
- 18 (g) Members of the mortgage foreclosure task force shall
19 serve without compensation and shall not be reimbursed for
20 expenses.
- 21 (h) The mortgage foreclosure task force shall submit a
22 report of its findings and recommendations, including any



1 proposed legislation, to the legislature no later than twenty
2 days prior to the convening of the regular session of 2011, and
3 shall participate in a joint informational session upon request
4 of the legislature.

5 (i) The mortgage foreclosure task force shall cease to
6 exist on June 30, 2011.

7 SECTION 3. This Act shall take effect on July 1, 2050.



Report Title:

Mortgage Foreclosures; Task Force

Description:

Establishes a task force to analyze factors affecting mortgage foreclosures in Hawaii, including relevant laws. Effective July 1, 2050. (SB2472 HD1)

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

