

**ACT 162**

S.B. NO. 2472

A Bill for an Act Relating to Mortgage Foreclosures.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the number of mortgage foreclosures of residential property has reached an alarming level. The legislature acknowledges that this situation is not unique to Hawaii and is part of

a nationwide economic downturn and resulting upheaval throughout the home lending industry. Because of these concerns, there have been numerous measures proposed during the 2010 legislative session to address foreclosure-related issues. However, it is unclear whether any of these approaches will improve the conditions relating to foreclosures or improve the current foreclosure laws.

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

The purpose of this Act is to create a mortgage foreclosure task force to conduct an extensive analysis of all factors affecting mortgage foreclosures in the state and to recommend appropriate legislation.

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

- (1) The department of commerce and consumer affairs' office of consumer protection;
- (2) A mortgage counseling organization approved by the United States Department of Housing and Urban Development, preferably with expertise in consumer credit counseling;
- (3) The Legal Aid Society of Hawaii;
- (4) The Hawaii Financial Services Association;
- (5) The Hawaii Bankers Association;
- (6) The Mortgage Bankers Association of Hawaii;
- (7) The Hawaii Credit Union League;
- (8) The Hawaii Council of Associations of Apartment Owners;
- (9) The Hawaii State Bar Association Collection Law Section;
- (10) The Hawaii State Bar Association Bankruptcy Law Section or the Bankruptcy Court of the United States District of Hawaii; and
- (11) The Hawaii state judiciary.

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

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

- (1) The adequacy of notice given to mortgagors of available mortgage counseling programs and the optimal timing for such notification and counseling;
- (2) The availability of loan documentation to mortgagors from mortgagees prior to and during the foreclosure process;
- (3) The establishment of statutory bidding thresholds for properties sold via foreclosure;
- (4) The statutory timeline for power-of-sale foreclosures;
- (5) Further regulation of distressed property consultants; and
- (6) Revisions to part II of chapter 667, Hawaii Revised Statutes, to make it a viable vehicle for power-of-sale foreclosures.

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

- (1) Existing regulation, on both the state and federal levels;
  - (2) The state of the national and local economy, mortgage loan default rates, and unemployment rates;
  - (3) Local borrowing and lending practices vis-à-vis mainland practices;
  - (4) Standard mortgage loan qualifications;
  - (5) Language barriers and other cultural factors unique to this state;
  - (6) The extent to which predatory mortgage lending, abuse of collection procedures, and otherwise unfair, fraudulent, and deceptive practices have impacted mortgagors;
  - (7) The effect of various mortgage loan terms, interest rates, fees, risk-based pricing, single-premium credit insurance, financing, and payment structures;
  - (8) The extent to which mortgage loan terms and conditions are disclosed to and understood by borrowers;
  - (9) A borrower's ability to negotiate mortgage loan terms and prices;
  - (10) The role of mortgage servicing agents and their practices;
  - (11) The availability, consumer knowledge, and use of mortgage counseling;
  - (12) The availability, consumer knowledge, and use of loan modification processes;
  - (13) The length of time and expense associated with completing the foreclosure process;
  - (14) The extent to which mortgagees provide mortgagors with mortgage documents when requested;
  - (15) The impact on the state's judicial system and the timely resolution of foreclosure disputes;
  - (16) The extent to which mortgage foreclosures go uncontested;
  - (17) The proof required to establish standing for foreclosing mortgagees;
  - (18) Association and maintenance fees and other costs borne by neighbor unit holders in condominium or community associations when mortgagors are in default;
  - (19) Abuses of the existing law by mortgagors and mortgagees;
  - (20) The effect of certain inefficiencies and barriers under the current law relating to foreclosures, such as serving process upon absent or deceased mortgagors; and
  - (21) The extent to which the above factors impact power-of-sale vis-à-vis judicial foreclosures.
- (d) The mortgage foreclosure task force shall analyze the effectiveness and any defects of the foreclosure procedures currently set in statute for both judicial and power-of-sale foreclosures. In this analysis, the task force:
- (1) May consider and recommend alternative procedures for timeshare property;
  - (2) May consider and recommend alternative procedures for foreclosures sought by junior lien holders such as condominiums, co-op apartments, and community associations collecting maintenance fees;
  - (3) May propose measures to clarify the application of chapter 667, Hawaii Revised Statutes, to other property statutes;
  - (4) Shall comment on the extent to which existing law does or does not comply with state and federal constitutional due process guarantees;

- (5) Shall comment on any effect proposed legislative changes will have on borrowers who are current on their mortgage loans; and
- (6) Shall seek to maintain and not erode existing consumer protections.
- (e) The mortgage foreclosure task force shall comment on the feasibility of establishing a state entity or administrator to focus on addressing the concerns of mortgagors, disseminating information, and otherwise engaging in consumer education. The task force shall propose funding mechanisms to enable the operation of this entity.
- (f) Members of the mortgage foreclosure task force shall serve without compensation and shall not be reimbursed for expenses.
- (g) The mortgage foreclosure task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the 2011 and 2012 regular sessions, and shall participate in a joint informational session upon request of the legislature.
- (h) The legislative reference bureau shall assist the task force in preparing its findings, recommendations, and proposed legislation; provided that the chairperson of the task force shall submit the task force's proposals to the legislative reference bureau for drafting no later than November 1, 2010 for the report to the 2011 regular session and no later than November 1, 2011, for the report to the 2012 regular session.
- (i) The mortgage foreclosure task force shall cease to exist on June 30, 2012.

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

(Approved June 3, 2010.)