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# Panel advocates foreclosure protections

**Homeowners should be given ample notice and be able to take their cases to court**

By Andrew Gomes

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Hawaii homeowners should have the right to have a state judge oversee foreclosure actions and should be notified in person at least 21 days in advance if their home is going to be put up for auction.

Those are two recommendations from a state task force representing the mortgage industry and consumers. The group delivered a report to the Legislature this week with initial suggestions for improving Hawaii's foreclosure process.

Lenders now can foreclose on properties without going through the courts, and most opt for this nonjudicial foreclosure process. The task force suggests homeowners be given the option of taking their cases before a judge.

Also, although lenders now must notify homeowners that their property will be put up for auction, there is no minimum notice requirement and the means of service is not specified.

The Mortgage Foreclosure Task Force also recommended that the Legislature clarify state law to prohibit lenders from obtaining deficiency judgments against owner-occupants whose foreclosed homes are sold by the lender for less than what is owed on the mortgage. A deficiency judgment occurs when a lender asks the borrower to make up the difference.

The task force was created at the direction of the Legislature to help lawmakers better address the alarming level of home foreclosures.

Members included mortgage trade association representatives, attorneys representing borrowers, and others. The task force was chaired by Stephen Levins,

director of the Office of Consumer Protection under the state Department of Commerce and Consumer Affairs.

Marvin Dang, a local foreclosure attorney for lenders, who served as vice chairman of the 17-member task force, said the group represented diverse -- and in some cases opposing -- interests, yet reached a consensus on several substantive issues.

"I was pleasantly surprised," he said. "I think a lot of people had low expectations that anything would happen. To get a diverse group of people to agree on these recommendations took a lot of work."

After six months, the group took positions on seven issues. Members said they needed more time to study several other issues that the task force was asked by the Legislature to review. These include whether lenders provide borrowers with adequate information about foreclosure counseling, and whether the wording in an alternate, unused section of Hawaii's 1998 foreclosure law can be made workable.

The task force was called on to deliver preliminary recommendations to the Legislature before the 2011 session, and a broader final report before the 2012 session.

Of the recommendations delivered Tuesday, perhaps the biggest would allow borrowers to transfer a foreclosure case to Circuit Court.

The vast majority of foreclosures in Hawaii are conducted outside court under a law dating to 1874. The law provides little protection for borrowers who contend lenders are improperly pursuing foreclosure, according to consumer advocates.

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Under the task-force recommendation, a homeowner would be able to file a complaint at Circuit Court to convert a nonjudicial foreclosure to a judicial foreclosure.

Another recommendation is that lenders give borrowers at least 21 days' notice that a home will be auctioned, in the same manner that civil lawsuits are served on defendants -- in person with certification.

A prohibition on deficiency judgments is recommended because state law is ambiguous about whether they are allowed. **Dang said few lenders obtain deficiency judgments.** Creditors with subordinate liens on a property extinguished by a foreclosure would still be allowed to pursue a monetary judgment.

The task force opposed an idea that buyers should have to bid some minimum share of appraised value or meet some other threshold in order to buy a foreclosed home at auction.

Three other recommendations are related to the way foreclosure proceedings and outcomes are recorded.

The task force provided the Legislature with a sample bill to execute its recommendations. It will be up to lawmakers to consider turning the recommendations into law.

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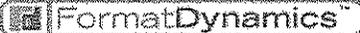
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