

Foreclosure bill aims to increase mediation

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By Andrew Gomes

Hawaii lawmakers are making a new attempt to involve mediation in home foreclosure cases, two years after lenders sidestepped a law that gave homeowners an option to have neutral third parties help resolve mortgage delinquencies.

The new measure, Senate Bill 1370, would force lenders to engage in mediation, at the request of homeowners, before they can file foreclosure lawsuits in state court. The provision would apply only to borrowers who live in homes facing foreclosure, and not investors or vacation-home owners.

The Senate Committee on Commerce and Consumer Protection passed the bill Tuesday, after consumer advocates and lending industry representatives clashed over the usefulness of mediation.

"There is no question that emerging data shows (mediation) works," said Bruce Kim, executive director of the state Office of Consumer Protection.

Kim said 70 percent of foreclosure cases should benefit from mediation in conjunction with certified housing counselors, and that such a program would reduce the number of foreclosure cases caught up in state courts.

Lending industry representatives argued that mediation would only extend Hawaii's already lengthy foreclosure process, which can last 12 to 18 months, and that borrowers would see little difference in case outcomes.

Edward Pei, executive director of the Hawaii Bankers Association, said lenders already are required to explore loan modifications with delinquent borrowers, and that judges have the discretion to direct foreclosure cases to mediation.

Pei said mediation at the outset of a case could add four to nine months onto the foreclosure process.

Linda Nakamura, president of the Mortgage Bankers Association of Hawaii, also opposed the bill.

"This would be duplicating the efforts that mortgage servicers make," she said.

Consumer advocates contend that lenders don't always make good-faith efforts at loan modifications, and that in some cases loan servicers make more money from foreclosure than restructuring a loan.

Jeff Gilbreath, executive director of Hawaiian Community Assets, said the nonprofit with counselors approved by the federal Department of Housing and Urban Development has received 1,089 calls to its foreclosure prevention hotline since 2008.

"The need for our Hawaii families to have the option to request mediation of judicial foreclosures could not be greater," he said in written testimony.

Kim of the Consumer Protection office added that Circuit Court judges don't appear to be directing many cases to mediation except on Hawaii island, where a dedicated mediation program was established several years ago.

The Hawaii Access to Justice Commission has recommended expansion of Hawaii island's program to other counties, but no expansion has occurred.

Meanwhile, the state Department of Commerce and Consumer Affairs has a foreclosure mediation program that has been idle since being established by the Legislature in 2011 as part of a law that mortgage lenders avoided using.

The program was kick-started with \$400,000 in state funds and allowed owner-occupant homeowners to bring a mediator into foreclosure cases initiated out of court. But lenders said penalties in the law exposed them to unfair

risk, so they began filing all cases in court.

To date, the mediation program under the 2011 law known as Act 48 has never been used.

Hawaii's mediation program was modeled on one in Nevada that government officials there regard as a success.

Between September 2009 and June 2011, Nevada's program handled roughly 12,000 mediation cases and produced agreements for about 3,700 homeowners to keep their homes. Mediation also resulted in about 1,900 homeowners agreeing to vacate their homes. Mediation failed to produce an agreement for about 5,500 homeowners, and about 1,500 foreclosures were completed.

A 2010 report by HUD and the Justice Department said more than 25 foreclosure mediation programs existed in at least 14 states, and that the most impressive programs had settlement rates resulting in about 60 percent of homeowners remaining in their homes.

"For millions of homeowners at risk of foreclosure, mediation programs offer an opportunity to evaluate their options and appraise possible alternatives to losing their homes," the federal report said.

Sen. Rosalyn Baker, chairwoman of the Commerce and Consumer Protection committee, has been a strong proponent of mediation and a chief architect of the mediation program.

The vote to pass the measure out of the committee was made by four members, two of whom voted with reservations. Sen. Malama Solo-mon (D, Kaupulehu-Wai-mea-North Hilo) was not present for the vote. The reservations were made by Sens. Glenn Wakai (D, Kalihi-Salt Lake-Alia-manu) and Sam Slom (R, Diamond Head-Kahala-Hawaii Kai).

The bill is headed to the Judiciary and Labor Committee for further consideration.

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