

**Topic-Setting Program to Advance Cutting-Edge  
Humanities and Social Sciences Research**

(Responding to Real Society)

**Progress Report**  
(Summary of Final Report)

**The Analysis of Deregulation of the Foreclosure Market of Real Estate: Effects of the  
Repeal of the Protection of Short-term Leasehold and Other Reforms**

**Core-Researcher:** Hideo Fukui

**Institution:** National Graduate Institute for Policy Studies

**Academic Unit:** Graduate School of Policy Studies

**Position:** Professor

**Research Period:** FY2013 – FY2018

## 1. Basic information of research project

Research Area	Evaluation Analysis on a Regulatory Reform
Project Title	The Analysis of Deregulation of the Foreclosure Market of Real Estate: Effects of the Repeal of the Protection of Short-term Leasehold and Other Reforms
Institution	National Graduate Institute for Policy Studies
Core-Researcher (Name, Academic Unit & Position)	Hideo Fukui, Professor, Graduate School of Policy Studies
Project Period	FY2013 – FY2018
Appropriations Plan (¥)	FY2013 4,300,000 JPY
	FY2014 3,100,000 JPY
	FY2015 3,650,000 JPY
	FY2016 2,590,000 JPY
	FY2017 2,100,000 JPY
	FY2018 1,650,000 JPY

## 2. Purpose of research

This research measures the cost and benefit of the reforms of the foreclosure market of real estate such as the repeal of the protection of short-term leasehold by the 2003 amendment of the Civil Code and Civil Execution Act with the detailed analysis of data (post hoc evaluation). It also develops the method to predict the cost and benefit of the further reforms of the foreclosure market (prior evaluation).

Generalizing the methodological achievements of this research, we will be able to accurately measure the cost and benefit of a variety of reform programs as well as to properly set the priority of theirs with the measurement of their real benefit (cost-reduced benefit). Providing basis and data for the legislators and policy planners, this research thus is to contribute to the solutions of various social issues.

## 3. Outline of research (Including study member)

Many antisocial groups intervened into the foreclosure sales for year. They earned a lot of money from it. It not only caused huge damage on creditors but also disrupted the financial order and the foreclosure market.

The primary reason of their exploitation of the foreclosure sales was the protection of the short-term leasehold stipulated in the Civil Code. It was the original part of the Civil Code established in 1898 and lasted until recently.

It allowed the renter to stay on for a maximum of three years if the leasehold was less than three years old against the winning bidder even without perfection. It was an exception of consequence to the Japan's rule of perfection.

The second reason was the rule of the minimal sale price which forbade the sale of the property if the bidding price was lower than one evaluated by the court.

Taking advantage of the two rules, the antisocial groups made big success by repeatedly blocking the foreclosure sales with a panoply of means such as placing fake renters in the property and forcing the creditor to extinguish the mortgage and/or to sell the property at a low price to their members.

Realizing the baneful effect of the two rules, the authors proposed the abolition of both of them. Consequently the protection of the short-term leasehold was repealed in 2003, the minimal sale price was substantially repealed in 2004. The former was implemented in 2004 (hereafter referred to as the 2004 implementation), the latter in 2005.

We conducted a positive research on their effect. We found out that they actually had a big effect on the foreclosure sales as we see in the drastic reduction of the blocking of the foreclosure sales and the rise in the winning bid price among others. (The winning bid prices of large condominiums with short-term leasehold were 15.4% lower than those of the owner-occupying ones before the implementation of the repeal, for example).

The next task of legal policy to more rationalize the foreclosure sales of Japan is to introduce non-judicial foreclosure, which is widely used in the U.S., where the private business conducts the procedure.

#### Study Member

Hideo Fukui (Project leader, National Graduate Institute for Policy Studies)

Yoshiaki Kume (Member, Former Professor of National Graduate Institute for Policy Studies)

Masato Nishiwaki (Member, Waseda University)

Yasushi Asami (Member, Tokyo University)

Masayuki Nakagawa (Member, Nihon University)

Shuhei Yoshida (Member, Attorney)

Takashi Uematsu (Member, Real Estate Appraisers)

Koji Maruoka (Member, Japan Housing Finance Agency)

Yasushi Yoshida (Member, Kyoto University)

#### 4. Research results and outcomes produced

These are the list of the accomplishments of this research.

(1) The effect of the protection of short-term leasehold on the winning bid prices before the reform

[1] Single-room type condominiums

We analyzed the effect of the protection of short-term leasehold on the winning bid prices of single-room condominiums before the 2004 implementation.

At the beginning we expected that the winning bid prices of ones with the protection of short-term leasehold would have been lower than those of the ones without the protection as the theory predicts. We also expected that, other things being equal, they would have been lower than those of the owner-occupying ones due to the high cost of removing the renters from the property.

Surprisingly enough, though, the winning bid prices of the single-room condominiums with the protection of the short-term leasehold were 11.3% higher (significant at 5%) than those of the owner-occupying ones other things being equal.

We may assume that it is because the effect of blocking the foreclosure sales was limited in terms of the bidding prices due to the fact that, in the first place, the prices of the single-room condominiums are lower than those of the larger ones.

[2] Family-type condominiums

We found the predicted result regarding the prices of the family-type condominiums.

That is, the winning bid prices of ones with the protection of short-term leasehold were 15.4% lower (significant at 5%) than those of the owner-occupying ones.

We can infer that it is because the prices of the family-type condominiums are higher than those of the single-room ones so that antisocial groups were more likely to come in to block the foreclosure sales in the hope of grabbing away big profits.

(2) The effect of existing short-term leasehold after the repeal of the protection of short-term leasehold

The 2004 amendment, which abolished the protection of short-term leasehold, was accompanied by the interim measure that the former provisions then in force will remain applicable to the existing short-term leasehold if it is perfected against a third party after the registration of the mortgage (Supplementary article 5 of the amended Civil Code).

As far as this interim measure is applicable, the renters with short-term leasehold which goes back to before 2004 will be able to duly assert their rights against the winning bidder while they keep leasehold even if they repeatedly renewed it.

With the passage of time, the leasehold this interim measure is applicable would decrease. But it coexisted with the short-term leasehold without protection for a certain period after the 2004 implementation. We can thus analyze the effect of the protection comparing the data of the protected ones and the unprotected ones in this period. This is what we found.

[1] Single-room type condominiums

(a) The winning bid prices of the single-room condominiums with short-term leasehold were 15.0% higher (significant at 1%) than those of the owner-occupying ones other things being equal just like the period before the 2004 implementation.

(b) Short-term leasehold in the data covers ones which go back to before 2004. It means that there are many renters who stay on for a long period even with short-term leasehold. They are unlikely to make an attempt to block the foreclosure sales. We can assume that the outcome of the analysis reflects this phenomenon.

[2] Family-type condominiums

Before the 2004 implementation, the winning bid prices of the family-type condominiums with short-term leasehold were lower than those of the owner-occupying ones. After the implementation, they were 7.2% higher (significant at 10%) than those of the owner-occupying ones.

We can assume that it reflects the fact that, just like single-room condominiums, the renters who plan to block the foreclosure sales decrease while those of no ill intent increase after the implementation.

(3) Yet-to-be solved problems

This research, and the experience of a series of reforms, show us that there are still lots of problems to be solved in the Japan's foreclosure system.

To list notable ones, there are problems of speeding up the foreclosure process and the building of the legal system to secure the higher bidding price, such as providing incentives to the auctioneers, accepting the private business into the process, and rationalizing the procedure.

For the legal design of the foreclosure system, the Coase's theorem gives a big hint.

The amendments in 2003 and 2004 were designed, in accordance with the theorem, to make the proper allocation of the initial rights, for one thing, and to reduce the transaction cost, for another, among others.

In consideration of the nature of foreclosure, however, we may reasonably argue that we can yet reduce the procedural cost a lot more.

There are legal precedents which effectively control the incentive structure idiosyncratic to the foreclosure system. It should be significant to wisely introduce them into the Japan's system such as the private foreclosure system widely used in many states of the U.S.