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## A BILL FOR AN ACT

RELATING TO CONDOMINIUM PROPERTY REGIMES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that condominium  
2 associations are nonprofit entities that are legally obligated  
3 to maintain, repair, and replace common elements, maintain  
4 replacement reserves, purchase insurance, provide utilities,  
5 retain managing agents and other professionals, and incur all  
6 other expenses required cooperate and manage condominium  
7 projects.

8           The legislature further finds that when condominium unit  
9 owners fail to pay common expense assessments, assessments on  
10 the rest of the owners must be increased to make up the  
11 deficiency, thereby increasing the burden on the non-defaulting  
12 owners and increasing the risk that more owners will go into  
13 default.

14           The legislature further finds that there are many  
15 jurisdictions, including but not limited to Alabama, Alaska,  
16 Arizona, Colorado, Connecticut, Florida, Massachusetts,  
17 Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania,



1 Rhode Island, Washington, Washington, D.C., and West Virginia,  
2 that have enacted "superlien" statutes providing that  
3 condominium associations have first priority to the proceeds of  
4 foreclosure sales with respect to six months of common expense  
5 assessments. Assessing the purchasers of delinquent units for  
6 up to six months of unpaid common expense assessments fairly and  
7 equitably balances the interests of mortgagees and condominium  
8 associations.

9 The legislature further finds that substantial changes in  
10 the condominium marketplace also warrant a change in the law.  
11 The rapid growth of commercial, mixed use, and luxury  
12 condominiums since 2000, means that there is wide variation in  
13 the amount of monthly common expense assessments. Such  
14 assessments may equal or exceed \$1,000 per month at some  
15 condominiums.

16 The \$1,800 limit on the amount of the special assessment  
17 available to condominium association under section 514B-146,  
18 Hawaii Revised Statutes, is seriously out of date, and the  
19 legislature finds that limiting the special assessment to a  
20 fixed amount is inappropriate in light of rapid fluctuations in  
21 common expense costs for such things as insurance, utilities,  
22 fuel, and similar volatile cost items.



1           The legislature further finds that the services provided by  
2 condominium associations benefit both owners in default and  
3 prospective purchasers by maintaining the value of the project  
4 and their units. It is inequitable to limit the special  
5 assessment to a fixed amount as the amount should include other  
6 special assessments levied against a unit in default or against  
7 all units generally, including sub-metered or check-metered  
8 utility charges that are initially paid by condominium  
9 associations but then billed to individual units.

10           The purpose of this Act is to allow condominium  
11 associations to impose all necessary fees and charges relating  
12 to defaulting unit owner on the subsequent purchaser of the  
13 unit, and to eliminate the statutory limit on the special  
14 assessment.

15           SECTION 2. Section 514B-146, Hawaii Revised Statutes, is  
16 amended by amending subsections (g), (h), and (i) to read as  
17 follows:

18           "(g) Subject to this subsection, and subsections (h) and  
19 (i), the board may specially assess the amount of the unpaid  
20 [~~regular monthly common~~] assessments for common expenses against  
21 a person who, in a judicial or nonjudicial power of sale  
22 foreclosure, purchases a delinquent unit; provided that:



- 1           (1) A purchaser who holds a mortgage on a delinquent unit  
2           that was recorded prior to the filing of a notice of  
3           lien by the association and who acquires the  
4           delinquent unit through a judicial or nonjudicial  
5           foreclosure proceeding, including purchasing the  
6           delinquent unit at a foreclosure auction, shall not be  
7           obligated to make, nor be liable for, payment of the  
8           special assessment as provided for under this  
9           subsection; and
- 10          (2) A person who subsequently purchases the delinquent  
11          unit from the mortgagee referred to in paragraph (1)  
12          shall be obligated to make, and shall be liable for,  
13          payment of the special assessment provided for under  
14          this subsection; and provided further that the  
15          mortgagee or subsequent purchaser may require the  
16          association to provide at no charge a notice of the  
17          association's intent to claim lien against the  
18          delinquent unit for the amount of the special  
19          assessment, prior to the subsequent purchaser's  
20          acquisition of title to the delinquent unit. The  
21          notice shall state the amount of the special



1 assessment, how that amount was calculated, and the  
2 legal description of the unit.

3 (h) The amount of the special assessment assessed under  
4 subsection (g) shall not exceed the total amount of unpaid  
5 [~~regular monthly~~] common expense assessments that were assessed  
6 during the six months immediately preceding the completion of  
7 the judicial or nonjudicial power of sale foreclosure. [~~In no~~  
8 ~~event shall the amount of the special assessment exceed the sum~~  
9 ~~of \$1,800.~~]

10 (i) For purposes of subsections (g) and (h), the following  
11 definitions shall apply, unless the context requires otherwise:

12 "Completion" means:

13 (1) In a nonjudicial power of sale foreclosure, when the  
14 affidavit required under section 667-5 is filed; and

15 (2) In a judicial foreclosure, when a purchaser is deemed  
16 to acquire title pursuant to subsection (b).

17 "[~~Regular monthly common~~] Common expense assessments" [~~does~~  
18 ~~not~~] include:

19 (1) Any [~~other~~] special assessment[~~r~~] imposed on the unit,  
20 [~~except for a~~] and any special assessment imposed on  
21 all units as part of a budget adopted pursuant to  
22 section 514B-148;



- 1 (2) Late charges, fines, or penalties;
- 2 (3) Interest assessed by the association;
- 3 (4) Any lien arising out of the assessment; [~~or~~]
- 4 (5) Any fees or costs related to the collection or
- 5 enforcement of the assessment, including attorneys'
- 6 fees and court costs[~~-~~]; and
- 7 (6) Any unpaid sub-metered or check-metered utility
- 8 charges."

9 SECTION 3. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Condominium Property Regimes; Common Expense Assessments

**Description:**

Clarifies the condominium property regime law with respect to common expense assessments.

