
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:

4 "§514B-A Association fiscal matters; post mortgage
5 foreclosure lien. (a) After completion of the foreclosure of a
6 mortgage of record that was recorded prior to the recordation of
7 a notice of a lien by the association, any unpaid share of
8 common expenses or assessments attributable to the foreclosed
9 unit shall be deemed to be a common expense collectible from all
10 the unit owners, including the acquirer and the successors and
11 assigns of the acquirer; provided that:

12 (1) Any purchaser of the unit at auction, other than the
13 mortgagee, shall be liable to the association for
14 unpaid regular monthly common assessments that were
15 assessed during the six months immediately preceding
16 the completion of the mortgage foreclosure; and

17 (2) If the mortgagee is the purchaser at auction, then any
18 successor or assign of the mortgagee shall be liable



1 to the association for unpaid regular monthly common
2 assessments that were assessed during the six months
3 immediately preceding the completion of the mortgage
4 foreclosure. The mortgagee shall not be liable for
5 any amount assessed prior to its acquisition of title.

6 (b) The cost of a release of any lien imposed by this
7 section shall be paid by the party requesting the release.

8 (c) After completion of a mortgage foreclosure, any
9 purchaser, including the mortgagee, shall be deemed to acquire
10 title and to be obligated to pay the unit's share of common
11 expenses and assessments attributable to the unit beginning:

12 (1) Thirty-six days after the order confirming the sale to
13 the purchaser has been filed with the court;

14 (2) Sixty days after the hearing at which the court grants
15 the motion to confirm the sale to the purchaser;

16 (3) Thirty days after the public sale in a nonjudicial
17 power of sale foreclosure pursuant to section 667-5;

18 or

19 (4) Upon the recordation of the affidavit of sale pursuant
20 to section 514B-146(c)(3);

21 whichever occurs first; provided that the mortgagee of record or
22 other purchaser of the unit shall not be deemed to acquire title



1 under paragraph (1), (2), or (3), if transfer of title is
2 delayed past the thirty-six days specified in paragraph (1), the
3 sixty days specified in paragraph (2), or the thirty days
4 specified in paragraph (3), when a person who appears at the
5 hearing on the motion or a party to the foreclosure action
6 requests reconsideration of the motion or order to confirm sale,
7 objects to the form of the proposed order to confirm sale,
8 appeals the decision of the court to grant the motion to confirm
9 sale, or the debtor or mortgagor declares bankruptcy or is
10 involuntarily placed into bankruptcy. In any such case, the
11 mortgagee of record or other purchaser of the unit shall be
12 deemed to acquire title upon recordation of the instrument of
13 conveyance.

14 (d) For the purposes of this section:

15 "Completion" means:

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

18 (2) In a judicial foreclosure, when a purchaser is deemed
19 to acquire title pursuant to subsection (c).

20 "Regular monthly common assessments" do not include:



1 (1) Any special assessment, except for a special
2 assessment imposed on all units as part of a budget
3 adopted pursuant to section 514B-148;

4 (2) Late charges, fines, or penalties;

5 (3) Interest assessed by the association;

6 (4) Any lien arising out of the assessment; or

7 (5) Any fees or costs related to the collection or
8 enforcement of the assessment, including attorney's
9 fees and court costs.

10 §514B-B Association fiscal matters; payment under protest;
11 remedies after payment of disputed amounts. (a) No unit owner
12 shall withhold any assessment claimed by the association for any
13 reason.

14 (b) A unit owner who disputes the amount of an assessment
15 may request a written statement that clearly indicates:

16 (1) The amount of regular monthly common assessments and
17 special assessments included in the assessment,
18 including the due date of each amount claimed;

19 (2) The amount of any penalty, late fee, lien filing fee,
20 and any other charge included in the assessment;

21 (3) The amount of attorney's fees and costs, if any,
22 included in the assessment;



1 (4) That under Hawaii law, a unit owner has no right to
2 withhold assessments for any reason;

3 (5) That a unit owner has a right to demand mediation or
4 arbitration to resolve disputes about the
5 amount or validity of an association's assessment,
6 provided that the unit owner immediately pays the
7 assessment in full and keeps assessments current; and

8 (6) That payment in full of the assessment does not
9 prevent the unit owner from contesting the assessment
10 or receiving a refund of amounts not owed.

11 Nothing in this section shall limit the rights of a unit owner
12 to the protection of all fair debt collection procedures
13 provided under federal and state law.

14 (c) After a unit owner pays an association the full amount
15 claimed by the association, the unit owner may:

16 (1) File an action in small claims court; or

17 (2) Require the association to mediate to resolve any
18 disputes concerning the amount or validity of the
19 association's claim.

20 (d) Any dispute remaining after mediation pursuant to
21 subsection (c) shall be subject to arbitration pursuant to
22 section 514B-162, upon demand by the association or by the unit



1 owner; provided that a unit owner may only file for arbitration
2 if all amounts claimed by the association are paid in full on or
3 before the date of filing. If the unit owner fails to keep all
4 association assessments current during the arbitration, the
5 association may request that the arbitrator temporarily suspend
6 the arbitration proceedings. If the unit owner pays all of the
7 association assessments within thirty days of the date of
8 suspension, the unit owner may request that the arbitrator
9 resume the arbitration proceedings. If the owner has not paid
10 all of the association assessments after thirty days from the
11 date of suspension, the association may request that the
12 arbitrator dismiss the arbitration proceedings. The unit owner
13 shall be entitled to a refund of any amounts paid to the
14 association that are determined to be not owed.

15 §514B-C Association fiscal matters; additional remedies.

16 (a) In conjunction with or as an alternative to foreclosure
17 proceedings under section 514B-146, if a unit is owner-occupied
18 and sixty days have elapsed from the date of the written notice
19 of nonpayment of the unit's share of the common expenses to the
20 unit owner and to the unit's first mortgagee, the association
21 may authorize its managing agent or board to terminate the
22 delinquent unit's access to the common elements and cease



1 supplying a delinquent unit with any and all services
2 normally supplied or paid for by the association. Any
3 terminated services and privileges shall be restored upon
4 payment of all delinquent assessments, but need not be restored
5 until payment in full is received.

6 (b) Before the managing agent or board may take the
7 actions permitted under subsection (a), the board shall adopt a
8 written policy providing for the actions and have the policy
9 approved by a majority vote of the unit owners at an annual
10 or special meeting of the association or by the written
11 consent of a majority of the unit owners."

12 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§514B-146 Association fiscal matters; lien for
15 assessments[-]; foreclosure. (a) All sums assessed by the
16 association but unpaid for the share of the common expenses
17 chargeable to any unit shall constitute a lien on the unit with
18 priority over all other liens, except:

19 (1) Liens for real property taxes and assessments lawfully
20 imposed by governmental authority against the unit;
21 and



1 (2) All sums unpaid on any mortgage of record that was
2 recorded prior to the recordation of a notice of a
3 lien by the association, and costs and expenses
4 including attorneys' fees provided in such mortgages.
5 All costs and expenses, including attorney's fees and costs
6 provided in section 514B-157, shall be secured by the lien.
7 The lien of the association may be foreclosed by action or by
8 nonjudicial or power of sale foreclosure procedures set forth in
9 ~~[chapter 667,~~ this section, by the managing agent or board,
10 acting on behalf of the association~~[, in like manner as a~~
11 ~~mortgage of real property]~~. In any such foreclosure, the unit
12 owner shall be required to pay a reasonable rental for the unit,
13 if so provided in the bylaws, and the plaintiff in the
14 foreclosure shall be entitled to the appointment of a receiver
15 to collect the rental owed. The managing agent or board, acting
16 on behalf of the association~~[, unless prohibited by the~~
17 ~~declaration,~~] may bid on the unit at foreclosure sale, and
18 acquire and hold, lease, mortgage, and convey the unit~~[,]~~,
19 unless prohibited by the declarations. Action to recover a
20 money judgment for unpaid common expenses shall be maintainable
21 without foreclosing or waiving the lien securing the unpaid
22 common expenses owed.



1 ~~[(b) Except as provided in subsection (g), when the~~
2 ~~mortgagee of a mortgage of record or other purchaser of a unit~~
3 ~~obtains title to the unit as a result of foreclosure of the~~
4 ~~mortgage, the acquirer of title and the acquirer's successors~~
5 ~~and assigns shall not be liable for the share of the common~~
6 ~~expenses or assessments by the association chargeable to the~~
7 ~~unit which became due prior to the acquisition of title to the~~
8 ~~unit by the acquirer. The unpaid share of common expenses or~~
9 ~~assessments shall be deemed to be common expenses collectible~~
10 ~~from all of the unit owners, including the acquirer and the~~
11 ~~acquirer's successors and assigns. The mortgagee of record or~~
12 ~~other purchaser of the unit shall be deemed to acquire title and~~
13 ~~shall be required to pay the unit's share of common expenses and~~
14 ~~assessments beginning:~~

15 ~~(1) Thirty six days after the order confirming the sale to~~
16 ~~the purchaser has been filed with the court;~~

17 ~~(2) Sixty days after the hearing at which the court grants~~
18 ~~the motion to confirm the sale to the purchaser;~~

19 ~~(3) Thirty days after the public sale in a nonjudicial~~
20 ~~power of sale foreclosure pursuant to section 667-5;~~
21 ~~or~~

22 ~~(4) Upon the recording of the instrument of conveyance;~~



1 ~~whichever occurs first; provided that the mortgagee of record or~~
2 ~~other purchaser of the unit shall not be deemed to acquire title~~
3 ~~under paragraph (1), (2), or (3), if transfer of title is~~
4 ~~delayed past the thirty-six days specified in paragraph (1), the~~
5 ~~sixty days specified in paragraph (2), or the thirty days~~
6 ~~specified in paragraph (3), when a person who appears at the~~
7 ~~hearing on the motion or a party to the foreclosure action~~
8 ~~requests reconsideration of the motion or order to confirm sale,~~
9 ~~objects to the form of the proposed order to confirm sale,~~
10 ~~appeals the decision of the court to grant the motion to confirm~~
11 ~~sale, or the debtor or mortgagor declares bankruptcy or is~~
12 ~~involuntarily placed into bankruptcy. In any such case, the~~
13 ~~mortgagee of record or other purchaser of the unit shall be~~
14 ~~deemed to acquire title upon recordation of the instrument of~~
15 ~~conveyance.~~

16 ~~(e) No unit owner shall withhold any assessment claimed by~~
17 ~~the association. A unit owner who disputes the amount of an~~
18 ~~assessment may request a written statement clearly indicating:~~

19 ~~(1) The amount of common expenses included in the~~
20 ~~assessment, including the due date of each amount~~
21 ~~claimed;~~



- 1 ~~(2) The amount of any penalty, late fee, lien filing fee,~~
- 2 ~~and any other charge included in the assessment,~~
- 3 ~~(3) The amount of attorneys' fees and costs, if any,~~
- 4 ~~included in the assessment,~~
- 5 ~~(4) That under Hawaii law, a unit owner has no right to~~
- 6 ~~withhold assessments for any reason,~~
- 7 ~~(5) That a unit owner has a right to demand mediation or~~
- 8 ~~arbitration to resolve disputes about the amount or~~
- 9 ~~validity of an association's assessment, provided the~~
- 10 ~~unit owner immediately pays the assessment in full and~~
- 11 ~~keeps assessments current, and~~
- 12 ~~(6) That payment in full of the assessment does not~~
- 13 ~~prevent the owner from contesting the assessment or~~
- 14 ~~receiving a refund of amounts not owed.~~

15 ~~Nothing in this section shall limit the rights of an owner to~~

16 ~~the protection of all fair debt collection procedures mandated~~

17 ~~under federal and state law.~~

18 ~~(d) A unit owner who pays an association the full amount~~

19 ~~claimed by the association may file in small claims court or~~

20 ~~require the association to mediate to resolve any disputes~~

21 ~~concerning the amount or validity of the association's claim.~~

22 ~~If the unit owner and the association are unable to resolve the~~



1 ~~dispute through mediation, either party may file for arbitration~~
2 ~~under section 514B 162, provided that a unit owner may only file~~
3 ~~for arbitration if all amounts claimed by the association are~~
4 ~~paid in full on or before the date of filing. If the unit owner~~
5 ~~fails to keep all association assessments current during the~~
6 ~~arbitration, the association may ask the arbitrator to~~
7 ~~temporarily suspend the arbitration proceedings. If the unit~~
8 ~~owner pays all association assessments within thirty days of the~~
9 ~~date of suspension, the unit owner may ask the arbitrator to~~
10 ~~recommence the arbitration proceedings. If the owner fails to~~
11 ~~pay all association assessments by the end of the thirty day~~
12 ~~period, the association may ask the arbitrator to dismiss the~~
13 ~~arbitration proceedings. The unit owner shall be entitled to a~~
14 ~~refund of any amounts paid to the association which are not~~
15 ~~owed.~~

16 ~~(e) In conjunction with or as an alternative to~~
17 ~~foreclosure proceedings under subsection (a), where a unit is~~
18 ~~owner occupied, the association may authorize its managing agent~~
19 ~~or board to, after sixty days' written notice to the unit owner~~
20 ~~and to the unit's first mortgagee of the nonpayment of the~~
21 ~~unit's share of the common expenses, terminate the delinquent~~
22 ~~unit's access to the common elements and cease supplying a~~



1 ~~delinquent unit with any and all services normally supplied or~~
2 ~~paid for by the association. Any terminated services and~~
3 ~~privileges shall be restored upon payment of all delinquent~~
4 ~~assessments but need not be restored until payment in full is~~
5 ~~received.~~

6 ~~(f) Before the board or managing agent may take the~~
7 ~~actions permitted under subsection (e), the board shall adopt a~~
8 ~~written policy providing for such actions and have the policy~~
9 ~~approved by a majority vote of the unit owners at an annual or~~
10 ~~special meeting of the association or by the written consent of~~
11 ~~a majority of the unit owners.~~

12 ~~(g) Subject to this subsection, and subsections (h) and~~
13 ~~(i), the board may specially assess the amount of the unpaid~~
14 ~~regular monthly common assessments for common expenses against a~~
15 ~~person who, in a judicial or nonjudicial power of sale~~
16 ~~foreclosure, purchases a delinquent unit; provided that:~~

17 ~~(1) A purchaser who holds a mortgage on a delinquent unit~~
18 ~~that was recorded prior to the filing of a notice of~~
19 ~~lien by the association and who acquires the~~
20 ~~delinquent unit through a judicial or nonjudicial~~
21 ~~foreclosure proceeding, including purchasing the~~
22 ~~delinquent unit at a foreclosure auction, shall not be~~



1 ~~obligated to make, nor be liable for, payment of the~~
2 ~~special assessment as provided for under this~~
3 ~~subsection; and~~

4 ~~(2) A person who subsequently purchases the delinquent~~
5 ~~unit from the mortgagee referred to in paragraph (1)~~
6 ~~shall be obligated to make, and shall be liable for,~~
7 ~~payment of the special assessment provided for under~~
8 ~~this subsection; and provided further that the~~
9 ~~mortgagee or subsequent purchaser may require the~~
10 ~~association to provide at no charge a notice of the~~
11 ~~association's intent to claim lien against the~~
12 ~~delinquent unit for the amount of the special~~
13 ~~assessment, prior to the subsequent purchaser's~~
14 ~~acquisition of title to the delinquent unit. The~~
15 ~~notice shall state the amount of the special~~
16 ~~assessment, how that amount was calculated, and the~~
17 ~~legal description of the unit.~~

18 ~~(h) The amount of the special assessment assessed under~~
19 ~~subsection (g) shall not exceed the total amount of unpaid~~
20 ~~regular monthly common assessments that were assessed during the~~
21 ~~six months immediately preceding the completion of the judicial~~



1 ~~or nonjudicial power of sale foreclosure. In no event shall the~~
2 ~~amount of the special assessment exceed the sum of \$3,600.~~

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

5 ~~"Completion" means:~~

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

8 ~~(2) In a judicial foreclosure, when a purchaser is deemed~~
9 ~~to acquire title pursuant to subsection (b).~~

10 ~~"Regular monthly common assessments" does not include:~~

11 ~~(1) Any other special assessment, except for a special~~
12 ~~assessment imposed on all units as part of a budget~~
13 ~~adopted pursuant to section 514B-148;~~

14 ~~(2) Late charges, fines, or penalties;~~

15 ~~(3) Interest assessed by the association;~~

16 ~~(4) Any lien arising out of the assessment; or~~

17 ~~(5) Any fees or costs related to the collection or~~
18 ~~enforcement of the assessment, including attorneys'~~
19 ~~fees and court costs.~~

20 ~~(j) The cost of a release of any lien filed pursuant to~~
21 ~~this section shall be paid by the party requesting the release.]~~

22 (b) In any foreclosure action pursuant to this section:



- 1 (1) The circuit court may assess the amount due to the
2 association, without the intervention of a jury, and
3 shall render judgment for the amount awarded and the
4 foreclosure of the association's lien. Execution may
5 be issued on the judgment, as ordered by the court;
- 6 (2) All mortgage creditors whose names are or may be
7 discovered by the association foreclosing its lien
8 shall be made parties to the action; provided that the
9 foreclosure of the association's lien shall not
10 extinguish priority liens as provided in subsection
11 (a);
- 12 (3) Proceeds in excess of amounts secured by the
13 association's lien, if any, shall be payable to
14 mortgage creditors according to the priority of their
15 liens, and not pro rata, and judgments of foreclosure
16 shall operate to extinguish all liens on the same
17 property except priority liens as provided in
18 subsection (a). Proceeds in excess of the amounts
19 secured by priority liens shall be payable to the unit
20 owner or as otherwise determined by the court in
21 accordance with principles of equity; and



1 (4) Any party may assert any legal or equitable defense to
2 the foreclosure; provided that a dispute as to the
3 amount due to the association shall not be allowed as
4 a defense to the action but shall be subject to the
5 remedies provided in section 514B-B.

6 (c) Nonjudicial and power of sale foreclosure of the
7 association's lien are both authorized in accordance with the
8 following procedures; provided that nonjudicial foreclosure of
9 the association's lien is authorized irrespective of whether a
10 power of sale is stated in the association's declaration or
11 bylaws; provided further that the procedures of this section
12 shall control over any power of sale provisions in the
13 declaration or bylaws of an association:

14 (1) The association shall be represented by an attorney
15 who is licensed and whose principal place of business
16 is in the State;

17 (2) The attorney shall give notice of the association's
18 intent to foreclose its lien as follows:

19 (A) Mailing notice, by first class mail and certified
20 mail, return receipt requested, not less than
21 twenty-one days before the day of sale, to the
22 following persons:



- 1 (i) The unit owner, at the owner's address as
2 shown in the records of the association and,
3 if different, at the address of the unit
4 being foreclosed;
- 5 (ii) All mortgage creditors whose names are or
6 can be discovered by the association;
- 7 (iii) The director of taxation; and
- 8 (iv) The planned community association in which
9 the unit is located, if any;
- 10 (B) Posting notice on the front door or other
11 conspicuous location on the premises not less
12 than twenty-one days before the day of sale; and
- 13 (C) Publishing notice once in each of three
14 successive weeks in a newspaper of general
15 circulation in the county where the unit is
16 located, the last publication to be not less than
17 fourteen days before the day of sale; and
- 18 (3) Within thirty days after selling the property, the
19 attorney shall record an affidavit of sale at the
20 bureau of conveyances setting forth fully and
21 particularly the association's acts consistent with
22 this section. The affidavit shall include a copy of



1 the notice of sale as an exhibit and may include other
2 evidence of compliance with the requirements of this
3 section. The affidavit or a certified copy shall be
4 admitted as evidence of the completion of the
5 foreclosure if it demonstrates that the unit was sold
6 in compliance with the procedures established in this
7 section. The affidavit shall be recorded and indexed
8 by the registrar, in the manner provided in chapter
9 501 or 502, as the case may be.

10 (d) The notice pursuant to subsection (c) shall provide
11 the following information:

- 12 (1) The name of the association foreclosing the lien;
- 13 (2) A description of the unit being foreclosed; and
- 14 (3) A statement of the time and place proposed for the
15 foreclosure sale, which may be any time after the
16 expiration of four weeks from the date when the notice
17 was first published in the newspaper.

18 (e) Any sale scheduled pursuant to subsection (c) may be
19 postponed by public announcement made by a person acting on
20 behalf of the association. The date and time of the postponed
21 auction, or notice that the auction was canceled, shall be

1 disclosed to any person entitled to notice pursuant to
2 subsection (c) who makes a request for the information.
3 (f) A downpayment of ten per cent of the highest
4 successful bid price, but not more, shall be paid to the
5 association by the successful bidder immediately after the
6 completion of the public sale; provided that the successful
7 bidder shall remain liable to the association for the balance of
8 the highest successful bid price and for damages, if any, that
9 result from the successful bidder's failure, neglect, or refusal
10 to complete the purchase.
11 (g) Any person entitled to notice pursuant to subsection
12 (c) may make a request, prior to the sale, for a quote of sums
13 claimed to be due to the association in relation to the default,
14 including an estimate of attorney's fees and costs associated
15 with the default, plus an estimate of all other fees and costs
16 associated with the default. The association shall disclose the
17 requested information within five business days after the
18 request.
19 (h) The association shall disclose the sale price, after
20 the sale, to any person entitled to notice pursuant to
21 subsection (c)."



1 SECTION 3. Section 603-21.7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§603-21.7 Nonjury cases. The several circuit courts
4 shall have jurisdiction, without the intervention of a jury
5 except as provided by statute, as follows:

6 (a) Of actions or proceedings:

7 (1) For the determination and declaration of heirs of
8 deceased persons, which jurisdiction shall be in
9 addition to the probate jurisdiction of the court;

10 (2) For the measurement of dower and curtesy, or the
11 partition of real estate;

12 (3) For enforcing and regulating the execution of trusts,
13 whether the trusts relate to real or personal estate,
14 for the foreclosure of mortgages, for the foreclosure
15 of condominium association liens, for the specific
16 performance of contracts, and except when a different
17 provision is made they shall have original and
18 exclusive jurisdiction of all other cases in the
19 nature of suits in equity, according to the usages and
20 principles of courts of equity;

21 (b) Of actions or proceedings in or in the nature of
22 habeas corpus, prohibition, mandamus, quo warranto, and all



1 other proceedings in or in the nature of applications for writs
2 directed to courts of inferior jurisdiction, to corporations and
3 individuals, as may be necessary to the furtherance of justice
4 and the regular execution of the law."


5 SECTION 4. In codifying the new sections added by section
6 1 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

12

INTRODUCED BY:



JAN 26 2011



Report Title:

Condominium Associations; Foreclosures

Description:

Provides various protections, remedies, and notice requirements regarding condominium associations and foreclosure of condominium units.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

