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# A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1           SECTION 1. Chapter 421J, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§421J- Foreclosure by action. (a) All sums assessed  
5 by an association but unpaid for the share of the common  
6 expenses chargeable to any unit shall constitute a lien on the  
7 unit with priority over all other liens, except:

8           (1) Liens for taxes and assessments lawfully imposed by  
9           governmental authority against the unit; and

10          (2) All sums unpaid on any mortgage of record that was  
11          recorded prior to the recordation of a notice of a  
12          lien by the association, and costs and expenses  
13          including attorneys' fees provided in the mortgage.

14 The lien of an association may be foreclosed by action or by  
15 nonjudicial or power of sale foreclosure procedures set forth in  
16 this section, by the managing agent or board, acting on behalf  
17 of the association. In any foreclosure of a lien pursuant to  
18 this section, the unit owner shall be required to pay a



1 reasonable rental for the unit, if provided in the bylaws of the  
2 association, and the plaintiff in the foreclosure shall be  
3 entitled to the appointment of a receiver to collect the rent  
4 owed. The managing agent or board, acting on behalf of the  
5 association, unless prohibited by the declaration, may bid on  
6 the unit at foreclosure sale and acquire, hold, lease, mortgage,  
7 or convey the unit. An action to recover a money judgment for  
8 unpaid common expenses shall be maintainable without foreclosing  
9 or waiving the lien securing the unpaid common expenses owed.

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

11 (1) The circuit court may assess the amount due to the  
12 association without the intervention of a jury, and  
13 shall render judgment for the amount awarded in the  
14 foreclosure of the association's lien; provided that  
15 execution may be issued on the judgment as ordered by  
16 the court;

17 (2) All mortgage creditors whose names are or can be  
18 discovered by the association foreclosing its lien  
19 shall be made parties to the action; provided that the  
20 foreclosure of the association's lien shall not  
21 extinguish priority liens as described in subsection

22 (a) ;



1           (3) Foreclosure of the association's lien shall operate to  
2           extinguish subsequent liens on the same property  
3           without forcing prior lienors to their right of  
4           recovery; provided that proceeds in excess of the  
5           amounts secured by prior liens and the association's  
6           lien shall be payable to the unit owner or as  
7           otherwise determined by the court in accordance with  
8           principles of equity; and

9           (4) Any party may assert any legal or equitable defense to  
10           the foreclosure of the association's lien; provided  
11           that a dispute as to the amount due to the association  
12           shall not be allowed as a defense to the action but  
13           shall be subject to the remedies provided in section  
14           514B-B.

15           (c) Nonjudicial power of sale foreclosure of the  
16           association's lien is authorized in accordance with this  
17           subsection; provided that nonjudicial foreclosure of the  
18           association's lien is authorized whether or not a power of sale  
19           is stated in the association's declaration or bylaws; and  
20           provided further that this section shall control over any  
21           conflicting power of sale provisions in the declaration or  
22           bylaws of an association:



- 1        (1) The association shall be represented by an attorney
- 2                who is licensed to practice law in the State and is
- 3                physically located in the State;
- 4        (2) The attorney shall give notice of the association's
- 5                intention to foreclose its lien by:
- 6                (A) Mailing notice, by both first class mail and by
- 7                        certified mail, return receipt requested, not
- 8                        fewer than twenty-one days before the day of
- 9                        sale, to:
- 10                      (i) The unit owner, at the owner's address as
- 11                                shown in the records of the association and,
- 12                                if different, at the address of the unit
- 13                                being foreclosed;
- 14                      (ii) All mortgage creditors whose names are or
- 15                                can be discovered by the association;
- 16                      (iii) The state director of taxation; and
- 17                      (iv) The director of finance of the county where
- 18                                the unit is located;
- 19                (B) Posting notice on the front door or other
- 20                        conspicuous location on the unit not fewer than
- 21                        twenty-one days before the day of sale; and



1           (C) Publishing notice three times, once in each of  
2           three successive weeks, in a newspaper having  
3           general circulation in the county where the unit  
4           is located, the last publication to be not fewer  
5           than fourteen days before the day of sale; and

6           (3) Within thirty days after selling the unit, the  
7           attorney shall record an affidavit at the bureau of  
8           conveyances or the land court, to be recorded and  
9           indexed by the registrant pursuant to chapter 501 or  
10           502 as appropriate, setting forth fully and  
11           particularly the association's acts consistent with  
12           this section; provided that an affidavit recorded  
13           pursuant to this paragraph shall include a copy of the  
14           notice of sale as an exhibit and may include other  
15           evidence of compliance with the requirements of this  
16           section; and provided further that the affidavit or a  
17           certified copy of the affidavit shall be admitted as  
18           evidence of the completion of the foreclosure if it  
19           demonstrates that the unit was sold in compliance with  
20           the procedures established in this section.

21           (d) The notice required by in subsection (c) shall  
22           identify the association foreclosing its lien, contain a



1 description of the unit being foreclosed upon, and contain a  
2 statement of the time and place proposed for the sale the unit  
3 no sooner than four weeks from the date when first advertised.

4 (e) Any sale for which notice has been given pursuant to  
5 subsection (c) may be postponed from time to time by public  
6 announcement made by a person acting on behalf of the  
7 association. The date and time of the postponed auction, or  
8 information that the auction was canceled, shall be disclosed to  
9 any person entitled to notice pursuant to subsection (c) who  
10 requests that information.

11 (f) An association that holds a lien on a unit may  
12 purchase the unit at auction and may satisfy the bid price  
13 requirement of subsection (g) by credit bidding up to the amount  
14 of the association's lien.

15 (g) Except as provided in subsection (f), a down payment  
16 of no more than ten per cent of the highest successful bid price  
17 shall be paid to the association by the successful bidder  
18 immediately after the completion of the auction sale; provided  
19 that the successful bidder shall remain liable to the  
20 association for the balance of the highest successful bid price  
21 and for damages, if any, that result from the successful  
22 bidder's failure, neglect, or refusal to complete the purchase.



1 The successful bidder's interest in the unit shall be subject to  
2 the right, title, and interest of any prior liens as defined in  
3 subsection (a) of this section.

4 (h) Any person entitled to notice pursuant to subsection  
5 (c) may make a request, prior to the auction, for the amount to  
6 cure the default, together with an estimated amount of the  
7 foreclosing association's attorneys' fees and costs, and all  
8 other fees and costs estimated to be incurred by the foreclosing  
9 association related to the default. The association shall  
10 disclose the requested information within five business days  
11 after the request.

12 (i) The nonjudicial foreclosure of an association's lien  
13 on a owner-occupied unit shall be stayed for a single forty-five  
14 day period if the unit owner notifies the association or its  
15 attorney by certified mail, return receipt requested, or by  
16 acknowledged hand delivery within five days after receipt of  
17 notice of the association's intention to foreclose its lien that  
18 the owner intends to and has the financial capacity to pay all  
19 sums claimed to be due by the association within forty-five days  
20 following the date of notice given by the owner pursuant to this  
21 subsection. The association's board of directors shall give due



1 consideration to a payment plan proposed by an owner-occupant if  
2 the plan provides for:

- 3       (1) Timely payment of all assessments that become due  
4       after the date that the payment plan is proposed; and  
5       (2) Additional monthly payments of an amount sufficient to  
6       cure the default within a reasonable period under the  
7       circumstances as determined by the board of directors  
8       in its reasonable exercise of discretion; provided  
9       that a period of six to twelve months may be  
10       considered reasonable if the owner demonstrates that  
11       the amount of the payments constitute all of the  
12       owner's discretionary income;

13 unless the owner has been delinquent in payment of assessments  
14 due to the association in the previous twenty-four months. An  
15 owner's failure to strictly perform any agreed upon payment plan  
16 shall entitle an association to pursue its remedies without  
17 further delay.

18       (j) The association shall disclose the sale price of the  
19 foreclosed unit once auctioned upon the request of any person  
20 entitled to notice pursuant to subsection (c). If the  
21 association purchases a unit in foreclosure and proposes to  
22 re-sell the unit, the association shall disclose in writing to





1 all prospective purchasers the recorded amounts and holders of  
2 all prior liens as defined in subsection (a) of this section on  
3 the unit."

4 SECTION 2. Chapter 514A, Hawaii Revised Statutes, is  
5 amended by adding three new sections to be appropriately  
6 designated and to read as follows:

7 "§514A-A Association fiscal matters; lien following  
8 mortgage foreclosure. (a) Subject to this subsection and  
9 subsections (b) and (c), the board of directors may specially  
10 assess the amount of the unpaid regular monthly common  
11 assessments for common expenses against a person who, in a  
12 judicial or nonjudicial foreclosure, purchases a delinquent  
13 apartment; provided that:

14 (1) A purchaser who holds a mortgage on a delinquent  
15 apartment that was recorded prior to the filing of a  
16 notice of lien by the association of apartment owners  
17 and who acquires the delinquent apartment through a  
18 judicial or nonjudicial foreclosure proceeding,  
19 including by purchasing the delinquent apartment at a  
20 foreclosure auction, shall not be obligated to make,  
21 nor be liable for, payment of the special assessment  
22 as provided for under this subsection; and



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

16       (b) The amount of the special assessment assessed under  
17       subsection (a) shall not exceed the total amount of unpaid  
18       regular monthly common assessments that were assessed during the  
19       six months immediately preceding the completion of the judicial  
20       or nonjudicial foreclosure. In no event shall the amount of the  
21       special assessment exceed the sum of \$3,600.



1           (c) After any judicial or nonjudicial foreclosure  
2 proceeding in which the association of apartment owners acquires  
3 title to the apartment, any excess rental income received by the  
4 association of apartment owners from the apartment shall be paid  
5 to existing lienors based on priority of lien, and not on a pro  
6 rata basis. For purposes of this subsection, excess rental  
7 income shall be any net income received by the association of  
8 apartment owners after paying, crediting, or reimbursing the  
9 association of apartment owners or a third party for:

10           (1) The special assessment for delinquency assessed  
11           pursuant to subsections (a) and (b);

12           (2) Any delinquent assessment for common expenses against  
13           the apartment due and owing from the date of the  
14           completion of the judicial or nonjudicial foreclosure  
15           that is not provided for in paragraph (1) or (4);

16           (3) Attorneys' fees and other collection costs related to  
17           the association of apartment owners' foreclosure of  
18           the apartment; or

19           (4) Any costs incurred by the association of apartment  
20           owners for the rental, repair, maintenance, or  
21           rehabilitation of the apartment while the association  
22           of apartment owners is in possession of the apartment



1 including monthly association of apartment owners  
2 assessment for common expenses due and owing from the  
3 date of the completion of the judicial or nonjudicial  
4 foreclosure, management fees, real estate commissions,  
5 cleaning and repair expenses for the apartment, and  
6 general excise taxes paid on rental income;  
7 provided that the special assessment for delinquent regular  
8 monthly common assessments under paragraph (1) shall be paid,  
9 credited, or reimbursed first.

10 (d) For purposes of subsections (a) and (b), 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 clause 514A-90(c)(3) is  
15 filed; and

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

18 "Regular monthly common assessments" shall include  
19 assessments for common expenses but shall not include:

20 (1) Any special assessment, except for a special  
21 assessment imposed on all apartments as part of a  
22 budget adopted pursuant to section 514A-83.6;



- 1        (2) Late charges, fines, or penalties;
- 2        (3) Interest assessed by the association of apartment  
3        owners;
- 4        (4) Any lien arising out of the assessment; or
- 5        (5) Any fees or costs related to the collection or  
6        enforcement of the assessment including attorneys'  
7        fees and court costs;
- 8        (e) The cost of a release of any lien imposed by this  
9        section shall be paid by the party requesting the release.
- 10       (f) Except as provided in subsection (a), when the  
11       mortgagee of a mortgage of record or other purchaser of an  
12       apartment obtains title to the apartment as a result of  
13       foreclosure of the mortgage, the acquirer of title and the  
14       acquirer's successors and assigns shall not be liable for the  
15       share of common expenses or assessments by the association of  
16       apartment owners chargeable to the apartment which became due  
17       prior to the acquisition of title to the apartment by the  
18       acquirer. The unpaid share of common expenses or assessments  
19       shall be deemed to be common expenses collectible from all of  
20       the apartment owners, including the acquirer and the acquirer's  
21       successors and assigns. The mortgagee of record or other  
22       purchaser of the apartment shall be deemed to acquire title and



1 shall be required to pay the apartment's share of common  
2 expenses and assessments beginning:

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

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

7 (3) Thirty days after the public sale in a nonjudicial or  
8 power of sale foreclosure pursuant to chapter 667; or

9 (4) Upon the recording of the instrument of conveyance,

10 whichever occurs first; provided that the mortgagee of record or

11 other purchaser of the apartment shall not be deemed to acquire

12 title under paragraph (1), (2), or (3) if transfer of title is

13 delayed past the thirty-six days specified in paragraph (1), the

14 sixty days specified in paragraph (2), or the thirty days

15 specified in paragraph (3) when a person who appears at the

16 hearing on the motion or a party to the foreclosure action

17 requests reconsideration of the motion or order to confirm sale,

18 objects to the form of the proposed order to confirm sale,

19 appeals the decision of the court to grant the motion to confirm

20 sale, or the debtor or mortgagor declares bankruptcy or is

21 involuntarily placed into bankruptcy. In any such case, the

22 mortgagee of record or other purchaser of the apartment shall be



1 deemed to acquire title upon recordation of the instrument of  
2 conveyance.

3 §514A-B Association fiscal matters; payment under protest;  
4 remedies after payment of disputed amounts. (a) No apartment  
5 owner shall withhold any assessment claimed by the association  
6 of apartment owners for any reason.

7 (b) An apartment owner who disputes the amount of an  
8 assessment may request a written statement that clearly  
9 indicates:

10 (1) The amount of regular monthly common assessments or  
11 special assessments included in the assessment,  
12 including the due date of each amount claimed;

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

15 (3) The amount of attorneys' fees and costs, if any,  
16 included in the assessment;

17 (4) That under Hawaii law, an apartment owner has no right  
18 to withhold assessments for any reason;

19 (5) That an apartment owner has a right to demand  
20 mediation or arbitration to resolve disputes about the  
21 amount or validity of an association of apartment  
22 owners' assessment; provided that the apartment owner



1 immediately pays the assessment in full and keeps  
2 assessments current; and  
3 (6) That payment in full of the assessment does not  
4 prevent the owner from contesting the assessment or  
5 receiving a refund of amounts not owed;  
6 provided that nothing in this section shall limit the rights of  
7 an owner to the protection of all fair debt collection  
8 procedures mandated under federal and state law.

9 (c) After an apartment owner pays an association of  
10 apartment owners the full amount claimed by the association of  
11 apartment owners, the apartment owner may:

12 (1) File an action in small claims court; or  
13 (2) Require the association of apartment owners to mediate  
14 to resolve any disputes concerning the amount or  
15 validity of the association of apartment owners'  
16 claim.

17 (d) Any dispute remaining after mediation pursuant to  
18 subsection (c) shall be subject to arbitration pursuant to  
19 section 514A-121, upon demand by the association of apartment  
20 owners or by the apartment owner; provided that an apartment  
21 owner may only file for arbitration if all amounts claimed by  
22 the association of apartment owners are paid in full on or





1 before the date of filing. If the apartment owner fails to keep  
2 all association of apartment owners' assessments current during  
3 the arbitration, the association of apartment owners may ask the  
4 arbitrator to temporarily suspend the arbitration proceedings.  
5 If the apartment owner pays all association of apartment owners'  
6 assessments that are claimed by the association within thirty  
7 days of the date of suspension, the apartment owner may ask the  
8 arbitrator to recommence the arbitration proceedings. If the  
9 owner fails to pay all association of apartment owners'  
10 assessments that are claimed by the association by the end of  
11 the thirty-day period, the association of apartment owners may  
12 ask the arbitrator to dismiss the arbitration proceedings. The  
13 apartment owner shall be entitled to a refund of any amounts  
14 paid to the association of apartment owners that are not owed.

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

16 (a) In conjunction with or as an alternative to foreclosure  
17 proceedings under section 514A-90, where an apartment is owner-  
18 occupied, the association of apartment owners may authorize its  
19 managing agent or board of directors to, after sixty days'  
20 written notice to the apartment owner and to the apartment's  
21 first mortgagee of the nonpayment of the apartment's share of  
22 the common expenses, terminate the delinquent apartment's access



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

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

14 (c) For purposes of this section, "owner-occupied" means  
15 that an apartment serves as the principal residence, as defined  
16 by the department of taxation, of the individual in whose name  
17 sole or joint legal title to the apartment is held; provided  
18 that complete possessory control of the premises is retained by  
19 the individual, as described in section 514A-101."

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



1           "§514B-A Association fiscal matters; lien following  
2 mortgage foreclosure. (a) Subject to this subsection and  
3 subsections (b) and (c), the board may specially assess the  
4 amount of the unpaid regular monthly common assessments for  
5 common expenses against a person who, in a judicial or  
6 nonjudicial foreclosure, purchases a delinquent unit; provided  
7 that:

8           (1) A purchaser who holds a mortgage on a delinquent unit  
9 that was recorded prior to the filing of a notice of  
10 lien by the association and who acquires the  
11 delinquent unit through a judicial or nonjudicial  
12 foreclosure proceeding, including by purchasing the  
13 delinquent unit at a foreclosure auction, shall not be  
14 obligated to make, nor be liable for, payment of the  
15 special assessment as provided for under this  
16 subsection; and

17           (2) A person who subsequently purchases the delinquent  
18 unit from the mortgagee described in paragraph (1)  
19 shall be obligated to make and shall be liable for  
20 payment of the special assessment provided for under  
21 this subsection; provided that the mortgagee or  
22 subsequent purchaser may require the association to



1 provide at no charge a notice of the association's  
2 intent to claim the lien against the delinquent unit  
3 for the amount of the special assessment prior to the  
4 subsequent purchaser's acquisition of title to the  
5 delinquent unit; provided further that the notice  
6 shall state the amount of the special assessment, how  
7 that amount was calculated, and the legal description  
8 of the unit.

9 (b) The amount of the special assessment assessed under  
10 subsection (a) shall not exceed the total amount of unpaid  
11 regular monthly common assessments that were assessed during the  
12 six months immediately preceding the completion of the judicial  
13 or nonjudicial foreclosure. In no event shall the amount of the  
14 special assessment exceed the sum of \$3,600.

15 (c) For purposes of subsections (a) and (b), the following  
16 definitions shall apply, unless the context requires otherwise:

17 "Completion" means:

18 (1) In a nonjudicial power of sale foreclosure, when the  
19 affidavit required under clause 514B-146(c)(3) is  
20 filed; and

21 (2) In a judicial foreclosure, when a purchaser is deemed  
22 to acquire title pursuant to subsection (f).



1       "Regular monthly common assessments" shall include  
2 assessments for common expenses but shall not include:

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

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

7       (3) Interest assessed by the association;

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

9       (5) Any fees or costs related to the collection or  
10 enforcement of the assessment including attorneys'  
11 fees and court costs;

12       (e) The cost of a release of any lien imposed by this  
13 section shall be paid by the party requesting the release.

14       (f) Except as provided in subsection (a), when the  
15 mortgagee of a mortgage of record or other purchaser of a unit  
16 obtains title to the unit as a result of foreclosure of the  
17 mortgage, the acquirer of title and the acquirer's successors  
18 and assigns shall not be liable for the share of common expenses  
19 or assessments by the association chargeable to the unit which  
20 became due prior to the acquisition of title to the unit by the  
21 acquirer. The unpaid share of common expenses or assessments  
22 shall be deemed to be common expenses collectible from all of



1 the unit owners, including the acquirer and the acquirer's  
2 successors and assigns. The mortgagee of record or other  
3 purchaser of the unit shall be deemed to acquire title and shall  
4 be required to pay the unit's share of common expenses and  
5 assessments beginning:

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

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

10 (3) Thirty days after the public sale in a nonjudicial or  
11 power of sale foreclosure pursuant to chapter 667; or

12 (4) Upon the recording of the instrument of conveyance,  
13 whichever occurs first; provided that the mortgagee of record or  
14 other purchaser of the unit shall not be deemed to acquire title  
15 under paragraph (1), (2), or (3) if transfer of title is delayed  
16 past the thirty-six days specified in paragraph (1), the sixty  
17 days specified in paragraph (2), or the thirty days specified in  
18 paragraph (3) when a person who appears at the hearing on the  
19 motion or a party to the foreclosure action requests

20 reconsideration of the motion or order to confirm sale, objects  
21 to the form of the proposed order to confirm sale, appeals the  
22 decision of the court to grant the motion to confirm sale, or



1 the debtor or mortgagor declares bankruptcy or is involuntarily  
2 placed into bankruptcy. In any such case, the mortgagee of  
3 record or other purchaser of the unit shall be deemed to acquire  
4 title upon recordation of the instrument of conveyance.

5 §514B-B Association fiscal matters; payment under protest;  
6 remedies after payment of disputed amounts. (a) No unit owner  
7 shall withhold any assessment claimed by the association for any  
8 reason.

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

11 (1) The amount of regular monthly common assessments or  
12 special assessments included in the assessment,  
13 including the due date of each amount claimed;

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

16 (3) The amount of attorneys' fees and costs, if any,  
17 included in the assessment;

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

20 (5) That a unit owner has a right to demand mediation or  
21 arbitration to resolve disputes about the amount or  
22 validity of an association's assessment; provided that



1           the unit owner immediately pays the assessment in full  
2           and keeps assessments current; and

3           (6) That payment in full of the assessment does not  
4           prevent the owner from contesting the assessment or  
5           receiving a refund of amounts not owed;

6 provided that nothing in this section shall limit the rights of  
7 an owner to the protection of all fair debt collection  
8 procedures mandated under federal and state law.

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

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

12           (2) Require the association to mediate to resolve any  
13 disputes concerning the amount or validity of the  
14 association's claim.

15           (d) Any dispute remaining after mediation pursuant to  
16 subsection (c) shall be subject to arbitration pursuant to  
17 section 514B-162, upon demand by the association or by the unit  
18 owner; provided that a unit owner may only file for arbitration  
19 if all amounts claimed by the association are paid in full on or  
20 before the date of filing. If the unit owner fails to keep all  
21 association assessments current during the arbitration, the  
22 association may ask the arbitrator to temporarily suspend the





1 arbitration proceedings. If the unit owner pays all association  
2 assessments within thirty days of the date of suspension, the  
3 unit owner may ask the arbitrator to recommence the arbitration  
4 proceedings. If the owner fails to pay all association  
5 assessments by the end of the thirty-day period, the association  
6 may ask the arbitrator to dismiss the arbitration proceedings.  
7 The unit owner shall be entitled to a refund of any amounts paid  
8 to the association that are not owed.

9 **§514B-C Association fiscal matters; additional remedies.**

10 (a) In conjunction with or as an alternative to foreclosure  
11 proceedings under section 514B-146, where a unit is owner-  
12 occupied, the association may authorize its managing agent or  
13 board to, after sixty days' written notice to the unit owner and  
14 to the unit's first mortgagee of the nonpayment of the unit's  
15 share of the common expenses, terminate the delinquent unit's  
16 access to the common elements and cease supplying a delinquent  
17 unit with any and all services normally supplied or paid for by  
18 the association. Any terminated services and privileges shall  
19 be restored upon payment of all delinquent assessments but need  
20 not be restored until payment in full is received.

21 (b) Before the board or managing agent may take the  
22 actions permitted under subsection (a), the board shall adopt a



1 written policy providing for the actions and have the policy  
2 approved by a majority vote of the unit owners at an annual or  
3 special meeting of the association or by the written consent of  
4 a majority of the unit owners.

5 (c) For purposes of this section, "owner-occupied" means  
6 that a unit serves as the principal residence, as defined by the  
7 department of taxation, of the individual in whose name sole or  
8 joint legal title to the unit is held; provided that complete  
9 possessory control of the premises is retained by the  
10 individual, as described in section 514B-95."

11 SECTION 4. Chapter 667, Hawaii Revised Statutes, is  
12 amended by adding two new sections to be appropriately  
13 designated and to read as follows:

14 "§667- Foreclosure notice; planned community;  
15 condominium; cooperative housing project. Notwithstanding any  
16 law or agreement to the contrary, any person who forecloses on a  
17 property within a planned community, a condominium apartment or  
18 unit, or an apartment in a cooperative housing project shall  
19 provide notification of the foreclosure by registered or  
20 certified mail to the board of directors of the planned  
21 community association, the association of owners of the  
22 condominium project, or the cooperative housing project in which



1 the property to be foreclosed is located at the time foreclosure  
2 proceedings are begun. Notice pursuant to this section, at a  
3 minimum, shall identify the property, condominium apartment or  
4 unit, or cooperative apartment that is the subject of the  
5 foreclosure and the name of the persons bringing foreclosure  
6 proceedings. This section shall not apply if the planned  
7 community association, condominium association of owners, or  
8 cooperative housing corporation is a party in a foreclosure  
9 action. This section shall not affect civil proceedings against  
10 parties other than the planned community association,  
11 association of owners, or cooperative housing corporation.

12 §667- Suspension of foreclosure actions by junior  
13 lienholders. (a) Upon initiation of a foreclosure action under  
14 part I or part II by a foreclosing mortgagee as defined in  
15 section 667-21(b), no junior lienholder shall be permitted to  
16 initiate or continue a foreclosure until the foreclosure  
17 initiated by the foreclosing mortgagee has been concluded by  
18 either a judgment issued by a court pursuant to section 667-1,  
19 the recording of an affidavit after public sale pursuant to  
20 section 667-33, or the filing of a resolution document under a  
21 dispute resolution process; provided that a junior lienholder



1 shall be permitted to initiate or continue with a foreclosure if  
2 permitted by the resolution document.

3 (b) This section shall not apply to the foreclosure of  
4 association liens arising under a declaration filed pursuant to  
5 chapter 421J or 514B."

6 SECTION 5. Section 514A-90, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "~~§514A-90 [Priority of lien.]~~ Association fiscal matters;

9 lien for assessments. (a) All sums assessed by [the] an  
10 association of apartment owners but unpaid for the share of the  
11 common expenses chargeable to any apartment constitute a lien on  
12 the apartment prior to all other liens, except:

13 (1) Liens for taxes and assessments lawfully imposed by  
14 governmental authority against the apartment; and

15 (2) All sums unpaid on any mortgage of record that was  
16 recorded prior to the recordation of notice of a lien  
17 by the association of apartment owners, and costs and  
18 expenses including attorneys' fees provided in such  
19 mortgages.

20 The lien of [the] an association of apartment owners may be  
21 foreclosed by action or by nonjudicial or power of sale  
22 foreclosure procedures set forth in [~~chapter 667,~~] this section by



1 the managing agent or board of directors, acting on behalf of the  
2 association of apartment owners [~~in like manner as a mortgage of~~  
3 ~~real property~~]. In any [~~such~~] foreclosure pursuant to this  
4 section, the apartment owner shall be required to pay a reasonable  
5 rental for the apartment, if [~~so~~] provided in the bylaws [~~of the~~  
6 association of apartment owners], and the plaintiff in the  
7 foreclosure shall be entitled to the appointment of a receiver to  
8 collect the [~~rental~~] rent owed. The managing agent or board of  
9 directors, acting on behalf of the association of apartment  
10 owners, unless prohibited by the declaration, may bid on the  
11 apartment at the foreclosure sale [~~of the~~] and acquire and hold, lease,  
12 mortgage, [~~and~~] or convey the apartment. [~~Action~~] An action to  
13 recover a money judgment for unpaid common expenses shall be  
14 maintainable without foreclosing or waiving the lien securing the  
15 unpaid common expenses owed.

16 [~~(b) Except as provided in subsection (g), when the~~  
17 ~~mortgagee of a mortgage of record or other purchaser of an~~  
18 ~~apartment obtains title to the apartment as a result of~~  
19 ~~foreclosure of the mortgage, the acquirer of title and the~~  
20 ~~acquirer's successors and assigns shall not be liable for the~~  
21 ~~share of the common expenses or assessments by the association of~~  
22 ~~apartment owners chargeable to the apartment which became due~~



1 ~~prior to the acquisition of title to the apartment by the~~  
 2 ~~acquirer. The unpaid share of common expenses or assessments~~  
 3 ~~shall be deemed to be common expenses collectible from all of the~~  
 4 ~~apartment owners, including the acquirer and the acquirer's~~  
 5 ~~successors and assigns. The mortgagee of record or other~~  
 6 ~~purchaser of the apartment shall be deemed to acquire title and~~  
 7 ~~shall be required to pay the apartment's share of common expenses~~  
 8 ~~and assessments beginning:~~

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

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

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

16       ~~(4) Upon the recording of the instrument of conveyance,~~  
 17 ~~whichever occurs first; provided that the mortgagee of record or~~  
 18 ~~other purchaser of the apartment shall not be deemed to acquire~~  
 19 ~~title under paragraph (1), (2), or (3), if transfer of title is~~  
 20 ~~delayed past the thirty six days specified in paragraph (1), the~~  
 21 ~~sixty days specified in paragraph (2), or the thirty days~~  
 22 ~~specified in paragraph (3), when a person who appears at the~~



1 ~~hearing on the motion or a party to the foreclosure action~~  
2 ~~requests reconsideration of the motion or order to confirm sale,~~  
3 ~~objects to the form of the proposed order to confirm sale,~~  
4 ~~appeals the decision of the court to grant the motion to confirm~~  
5 ~~sale, or the debtor or mortgagor declares bankruptcy or is~~  
6 ~~involuntarily placed into bankruptcy. In any such case, the~~  
7 ~~mortgagee of record or other purchaser of the apartment shall be~~  
8 ~~deemed to acquire title upon recordation of the instrument of~~  
9 ~~conveyance.~~

10 ~~(c) No apartment owner shall withhold any assessment~~  
11 ~~claimed by the association. An apartment owner who disputes the~~  
12 ~~amount of an assessment may request a written statement clearly~~  
13 ~~indicating:~~

14 ~~(1) The amount of common expenses included in the~~  
15 ~~assessment, including the due date of each amount~~  
16 ~~claimed;~~

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

19 ~~(3) The amount of attorneys' fees and costs, if any,~~  
20 ~~included in the assessment;~~

21 ~~(4) That under Hawaii law, an apartment owner has no right~~  
22 ~~to withhold assessments for any reason;~~



- 1       ~~(5) That an apartment owner has a right to demand~~  
2           ~~mediation or arbitration to resolve disputes about the~~  
3           ~~amount or validity of an association's assessment;~~  
4           ~~provided the apartment owner immediately pays the~~  
5           ~~assessment in full and keeps assessments current; and~~  
6       ~~(6) That payment in full of the assessment shall not~~  
7           ~~prevent the owner from contesting the assessment or~~  
8           ~~receiving a refund of amounts not owed.~~

9       ~~Nothing in this section shall limit the rights of an owner to~~  
10       ~~the protection of all fair debt collection procedures mandated~~  
11       ~~under federal and state law.~~

12       ~~(d) An apartment owner who pays an association the full~~  
13       ~~amount claimed by the association may file in small claims court~~  
14       ~~or require the association to mediate to resolve any disputes~~  
15       ~~concerning the amount or validity of the association's claim.~~  
16       ~~If the apartment owner and the association are unable to resolve~~  
17       ~~the dispute through mediation, either party may file for~~  
18       ~~arbitration under part VII; provided that an apartment owner may~~  
19       ~~only file for arbitration if all amounts claimed by the~~  
20       ~~association are paid in full on or before the date of filing.~~  
21       ~~If the apartment owner fails to keep all association assessments~~  
22       ~~current during the arbitration, the association may ask the~~





1 ~~arbitrator to temporarily suspend the arbitration proceedings.~~  
2 ~~If the apartment owner pays all association assessments within~~  
3 ~~thirty days of the date of suspension, the apartment owner may~~  
4 ~~ask the arbitrator to recommence the arbitration proceedings.~~  
5 ~~If the owner fails to pay all association assessments by the end~~  
6 ~~of the thirty day period, the association may ask the arbitrator~~  
7 ~~to dismiss the arbitration proceedings. The apartment owner~~  
8 ~~shall be entitled to a refund of any amounts paid to the~~  
9 ~~association which are not owed.~~

10 ~~(e) As an alternative to foreclosure proceedings under~~  
11 ~~subsection (a), where an apartment is owner occupied, the~~  
12 ~~association of apartment owners may authorize its managing agent~~  
13 ~~or board of directors to, after sixty days' written notice to the~~  
14 ~~apartment owner and to the apartment's first mortgagee of the~~  
15 ~~nonpayment of the apartment's share of the common expenses,~~  
16 ~~terminate the delinquent apartment's access to the common elements~~  
17 ~~and cease supplying a delinquent apartment with any and all~~  
18 ~~services normally supplied or paid for by the association of~~  
19 ~~apartment owners. Any terminated services and privileges shall be~~  
20 ~~restored upon payment of all delinquent assessments.~~

21 ~~(f) Before the board of directors or managing agent may~~  
22 ~~take the actions permitted under subsection (e), the board shall~~



1 ~~adopt a written policy providing for such actions and have the~~  
2 ~~policy approved by a majority vote of the apartment owners at an~~  
3 ~~annual or special meeting of the association or by the written~~  
4 ~~consent of a majority of the apartment owners.~~

5 ~~(g) Subject to this subsection, and subsections (h) and~~  
6 ~~(i), the board of an association of apartment owners may~~  
7 ~~specially assess the amount of the unpaid regular monthly common~~  
8 ~~assessments for common area expenses against a person who, in a~~  
9 ~~judicial or nonjudicial power of sale foreclosure, purchases a~~  
10 ~~delinquent apartment; provided that:~~

11 ~~(1) A purchaser who holds a mortgage on a delinquent~~  
12 ~~apartment that was recorded prior to the filing of a~~  
13 ~~notice of lien by the association of apartment owners~~  
14 ~~and who acquires the delinquent apartment through a~~  
15 ~~judicial or nonjudicial foreclosure proceeding,~~  
16 ~~including purchasing the delinquent apartment at a~~  
17 ~~foreclosure auction, shall not be obligated to make,~~  
18 ~~nor be liable for, payment of the special assessment~~  
19 ~~as provided for under this subsection; and~~

20 ~~(2) A person who subsequently purchases the delinquent~~  
21 ~~apartment from the mortgagee referred to in paragraph~~  
22 ~~(1) shall be obligated to make, and shall be liable~~



1           ~~for, payment of the special assessment provided for~~  
2           ~~under this subsection; provided that the mortgagee or~~  
3           ~~subsequent purchaser may require the association of~~  
4           ~~apartment owners to provide at no charge a notice of~~  
5           ~~the association's intent to claim a lien against the~~  
6           ~~delinquent apartment for the amount of the special~~  
7           ~~assessment, prior to the subsequent purchaser's~~  
8           ~~acquisition of title to the delinquent apartment. The~~  
9           ~~notice shall state the amount of the special~~  
10          ~~assessment, how that amount was calculated, and the~~  
11          ~~legal description of the apartment.~~

12          ~~(h) The amount of the special assessment assessed under~~  
13          ~~subsection (g) shall not exceed the total amount of unpaid~~  
14          ~~regular monthly common assessments that were assessed during the~~  
15          ~~six months immediately preceding the completion of the judicial~~  
16          ~~or nonjudicial power of sale foreclosure. In no event shall the~~  
17          ~~amount of the special assessment exceed the sum of \$3,600.~~

18          ~~(i) For purposes of subsections (g) and (h), the following~~  
19          ~~definitions shall apply:~~

20          ~~"Completion" means:~~



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

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

7           ~~"Regular monthly common assessments" shall not include:~~

8           ~~(1) Any other special assessment, except for a~~  
9           ~~special assessment imposed on all apartments as~~  
10           ~~part of a budget adopted pursuant to section~~  
11           ~~514A-83.6;~~

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

13           ~~(3) Interest assessed by the association of apartment~~  
14           ~~owners;~~

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

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

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

20           (1) The circuit court may assess the amount due to the  
21           association of apartment owners without the  
22           intervention of a jury and shall render judgment for



1 the amount awarded in the foreclosure of the  
2 association's lien; provided that execution may be  
3 issued on the judgment as ordered by the court;

4 (2) All mortgage creditors whose names are or can be  
5 discovered by the association of apartment owners  
6 foreclosing its lien shall be made parties to the  
7 action; provided that the foreclosure of the  
8 association of apartment owners' lien shall not  
9 extinguish priority liens as described in subsection  
10 (a);

11 (3) Foreclosure of the association of apartment owners'  
12 lien shall operate to extinguish subsequent liens on  
13 the same apartment without forcing prior lienors to  
14 their right of recovery; provided that proceeds in  
15 excess of the amounts secured by prior liens and the  
16 association of apartment owners' lien shall be payable  
17 to the apartment owner or as otherwise determined by  
18 the court in accordance with principles of equity; and

19 (4) Any party may assert any legal or equitable defense to  
20 the foreclosure of the association of apartment  
21 owners' lien; provided that a dispute as to the amount  
22 due to the association of apartment owners shall not



1 be allowed as a defense to the action but shall be  
2 subject to the remedies provided in section 514A-B.

3 (c) Nonjudicial power of sale foreclosure of the  
4 association of apartment owners' lien is authorized in  
5 accordance with this subsection; provided that nonjudicial  
6 foreclosure of the association of apartment owners' lien is  
7 authorized whether or not a power of sale is stated in the  
8 association of apartment owners' declaration or bylaws; and  
9 provided further that this section shall control over any  
10 conflicting power of sale provisions in the declaration or  
11 bylaws of an association of apartment owners:

12 (1) The association of apartment owners shall be  
13 represented by an attorney who is licensed to practice  
14 law in the State and is physically located in the  
15 State;

16 (2) The attorney shall give notice of the association of  
17 apartment owners' intention to foreclose its lien by:

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



- 1            (i) The apartment owner, at the owner's address  
2            as shown in the records of the association  
3            of apartment owners and, if different, at  
4            the address of the apartment being  
5            foreclosed;
- 6            (ii) All mortgage creditors whose names are or  
7            can be discovered by the association;
- 8            (iii) The director of taxation;
- 9            (iv) The director of finance of the county where  
10           the apartment is located; and
- 11           (v) The planned community association in which  
12           the apartment is located of which the  
13           apartment owner is a member, if any;
- 14           (B) Posting notice on the front door or other  
15           conspicuous location on the apartment not fewer  
16           than twenty-one days before the day of sale; and
- 17           (C) Publishing notice three times, once in each of  
18           three successive weeks, in a newspaper having  
19           general circulation in the county where the  
20           apartment is located, the last publication to be  
21           not fewer than fourteen days before the day of  
22           sale; and



1       (3) Within thirty days after selling the apartment, the  
2       attorney shall record an affidavit at the bureau of  
3       conveyances or the land court to be recorded and  
4       indexed according to chapter 501 or 502, as  
5       appropriate, setting forth fully and particularly the  
6       association of apartment owners' acts consistent with  
7       this section; provided that an affidavit recorded  
8       pursuant to this paragraph shall include a copy of the  
9       notice of sale as an exhibit and may include other  
10      evidence of compliance with the requirements of this  
11      section; and provided further that the affidavit or a  
12      certified copy of the affidavit shall be admitted as  
13      evidence of the completion of the foreclosure if it  
14      demonstrates that the apartment was sold in compliance  
15      with the procedures established in this section.

16      (d) The notice required by subsection (c) shall identify  
17      the association of apartment owners foreclosing its lien,  
18      contain a description of the apartment being foreclosed upon,  
19      and contain a statement of the time and place proposed for the  
20      sale of the apartment no sooner than four weeks from the date  
21      when first advertised.





1       (e) Any sale for which notice has been given pursuant to  
2 subsection (c) may be postponed from time to time by public  
3 announcement made by a person acting on behalf of the  
4 association of apartment owners. The date and time of the  
5 postponed auction, or information that the auction was canceled,  
6 shall be disclosed to any person entitled to notice pursuant to  
7 subsection (c) who requests that information.

8       (f) An association of apartment owners that holds a lien  
9 on an apartment may purchase the apartment at auction and may  
10 satisfy the bid price requirement of subsection (g) by credit  
11 bidding up to the amount of the association's lien.

12       (g) Except as provided in subsection (f), a down payment  
13 of no more than ten per cent of the highest successful bid price  
14 shall be paid to the association of apartment owners by the  
15 successful bidder immediately after the completion of the  
16 auction sale; provided that the successful bidder shall remain  
17 liable to the association of apartment owners for the balance of  
18 the highest successful bid price and for damages, if any, that  
19 result from the successful bidder's failure, neglect, or refusal  
20 to complete the purchase. The successful bidder's interest in  
21 the apartment shall be subject to the right, title, and interest  
22 of any prior liens as defined in subsection (a) of this section.



1        (h) Any person entitled to notice pursuant to subsection  
2        (c) may make a request, prior to the auction, for the amount to  
3        cure the default, together with an estimated amount of the  
4        foreclosing association's attorneys' fees and costs, and all  
5        other fees and costs estimated to be incurred by the foreclosing  
6        association of apartment owners related to the default. The  
7        association of apartment owners shall disclose the requested  
8        information within five business days after the request.

9        (i) If an apartment owner notifies the association of  
10       apartment owners or its attorney by certified mail return  
11       receipt requested or by hand-delivery within five business days  
12       following receipt of the information requested pursuant to  
13       subsection (h) that it intends to cure the default, the  
14       association of apartment owners shall allow forty-five calendar  
15       days to allow the apartment owner to cure the delinquency. The  
16       association of apartment owners shall not reject a reasonable  
17       payment plan for cure of the default; provided that a reasonable  
18       plan shall require the owner to pay at a minimum the current  
19       assessment for common expenses and some amount owed on the past  
20       due balance. From and after the date that the apartment owner  
21       gives written notice to the association of apartment owners of  
22       its intent to cure the delinquency, any nonjudicial foreclosure



1 of the lien shall be stayed pending the forty-five day period or  
2 a longer period that is agreed upon by the parties.

3 (j) The association of apartment owners shall disclose the  
4 sale price of the foreclosed apartment once auctioned upon the  
5 request of any person entitled to notice pursuant to subsection  
6 (c). If the association of apartment owners purchases an  
7 apartment in foreclosure and proposes to re-sell the apartment,  
8 the association of apartment owners shall disclose in writing to  
9 all prospective purchasers the recorded amounts and holders of  
10 all prior liens as defined in subsection (a) of this section on  
11 the apartment.

12 (k) Any dispute that arises under this section shall be  
13 subject to the alternative dispute resolution process under  
14 section 514A-121.5."

15 SECTION 6. Section 514A-121.5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) If an apartment owner or the board of directors  
18 requests mediation of a dispute involving the interpretation or  
19 enforcement of the association of apartment owners' declaration,  
20 bylaws, house rules, or a matter involving section 514A-82(b)(1)  
21 to (13), 514A-82.1, [~~514A-82.15,~~] 514A-82.3, 514A-82.5, 514A-82.6,  
22 514A-82.15, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4,



1 514A-83.5, 514A-84, 514A-84.5, [~~or~~] 514A-90, or 514A-92.5, the  
2 other party in the dispute shall be required to participate in  
3 mediation. Each party shall be wholly responsible for its own  
4 costs of participating in mediation, unless at the end of the  
5 mediation process, both parties agree that one party shall pay all  
6 or a specified portion of the mediation costs. If an apartment  
7 owner or the board of directors refuses to participate in the  
8 mediation of a particular dispute, a court may take this refusal  
9 into consideration when awarding expenses, costs, and attorney's  
10 fees."

11 SECTION 7. Section 514B-146, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§514B-146 Association fiscal matters; lien for**  
14 **assessments.** (a) All sums assessed by [~~the~~] an association but  
15 unpaid for the share of the common expenses chargeable to any  
16 unit shall constitute a lien on the unit with priority over all  
17 other liens, except:

- 18 (1) Liens for real property taxes and assessments lawfully  
19 imposed by governmental authority against the unit;  
20 and  
21 (2) All sums unpaid on any mortgage of record that was  
22 recorded prior to the recordation of a notice of a



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

19           ~~[(b) Except as provided in subsection (g), when the~~  
20   ~~mortgagee of a mortgage of record or other purchaser of a unit~~  
21   ~~obtains title to the unit as a result of foreclosure of the~~  
22   ~~mortgage, the acquirer of title and the acquirer's successors~~



1 ~~and assigns shall not be liable for the share of the common~~  
 2 ~~expenses or assessments by the association chargeable to the~~  
 3 ~~unit which became due prior to the acquisition of title to the~~  
 4 ~~unit by the acquirer. The unpaid share of common expenses or~~  
 5 ~~assessments shall be deemed to be common expenses collectible~~  
 6 ~~from all of the unit owners, including the acquirer and the~~  
 7 ~~acquirer's successors and assigns. The mortgagee of record or~~  
 8 ~~other purchaser of the unit shall be deemed to acquire title and~~  
 9 ~~shall be required to pay the unit's share of common expenses and~~  
 10 ~~assessments beginning:~~

- 11 ~~(1) Thirty six days after the order confirming the sale to~~  
 12 ~~the purchaser has been filed with the court;~~
- 13 ~~(2) Sixty days after the hearing at which the court grants~~  
 14 ~~the motion to confirm the sale to the purchaser;~~
- 15 ~~(3) Thirty days after the public sale in a nonjudicial~~  
 16 ~~power of sale foreclosure pursuant to section 667 5;~~  
 17 ~~or~~
- 18 ~~(4) Upon the recording of the instrument of conveyance;~~  
 19 ~~whichever occurs first; provided that the mortgagee of record or~~  
 20 ~~other purchaser of the unit shall not be deemed to acquire title~~  
 21 ~~under paragraph (1), (2), or (3), if transfer of title is~~  
 22 ~~delayed past the thirty six days specified in paragraph (1), the~~



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

12 ~~(c) No unit owner shall withhold any assessment claimed by~~  
13 ~~the association. A unit owner who disputes the amount of an~~  
14 ~~assessment may request a written statement clearly indicating:~~

15 ~~(1) The amount of common expenses included in the~~  
16 ~~assessment, including the due date of each amount~~  
17 ~~claimed;~~

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

20 ~~(3) The amount of attorneys' fees and costs, if any,~~  
21 ~~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 amount or~~  
5           ~~validity of an association's assessment, provided the~~  
6           ~~unit owner immediately pays the assessment in full and~~  
7           ~~keeps assessments current; and~~
- 8       ~~(6) That payment in full of the assessment does not~~  
9           ~~prevent the owner from contesting the assessment or~~  
10          ~~receiving a refund of amounts not owed.~~

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

14       ~~(d) A unit owner who pays an association the full amount~~  
15 ~~claimed by the association may file in small claims court or~~  
16 ~~require the association to mediate to resolve any disputes~~  
17 ~~concerning the amount or validity of the association's claim.~~  
18 ~~If the unit owner and the association are unable to resolve the~~  
19 ~~dispute through mediation, either party may file for arbitration~~  
20 ~~under section 514B-162; provided that a unit owner may only file~~  
21 ~~for arbitration if all amounts claimed by the association are~~  
22 ~~paid in full on or before the date of filing. If the unit owner~~





1 ~~fails to keep all association assessments current during the~~  
2 ~~arbitration, the association may ask the arbitrator to~~  
3 ~~temporarily suspend the arbitration proceedings. If the unit~~  
4 ~~owner pays all association assessments within thirty days of the~~  
5 ~~date of suspension, the unit owner may ask the arbitrator to~~  
6 ~~recommence the arbitration proceedings. If the owner fails to~~  
7 ~~pay all association assessments by the end of the thirty day~~  
8 ~~period, the association may ask the arbitrator to dismiss the~~  
9 ~~arbitration proceedings. The unit owner shall be entitled to a~~  
10 ~~refund of any amounts paid to the association which are not~~  
11 ~~owed.~~

12 ~~(c) In conjunction with or as an alternative to~~  
13 ~~foreclosure proceedings under subsection (a), where a unit is~~  
14 ~~owner occupied, the association may authorize its managing agent~~  
15 ~~or board to, after sixty days' written notice to the unit owner~~  
16 ~~and to the unit's first mortgagee of the nonpayment of the~~  
17 ~~unit's share of the common expenses, terminate the delinquent~~  
18 ~~unit's access to the common elements and cease supplying a~~  
19 ~~delinquent unit with any and all services normally supplied or~~  
20 ~~paid for by the association. Any terminated services and~~  
21 ~~privileges shall be restored upon payment of all delinquent~~



1 ~~assessments but need not be restored until payment in full is~~  
2 ~~received.~~

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

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

14 ~~(1) A purchaser who holds a mortgage on a delinquent unit~~  
15 ~~that was recorded prior to the filing of a notice of~~  
16 ~~lien by the association and who acquires the~~  
17 ~~delinquent unit through a judicial or nonjudicial~~  
18 ~~foreclosure proceeding, including purchasing the~~  
19 ~~delinquent unit at a foreclosure auction, shall not be~~  
20 ~~obligated to make, nor be liable for, payment of the~~  
21 ~~special assessment as provided for under this~~  
22 ~~subsection; and~~



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

15       ~~(h) The amount of the special assessment assessed under~~  
16       ~~subsection (g) shall not exceed the total amount of unpaid~~  
17       ~~regular monthly common assessments that were assessed during the~~  
18       ~~six months immediately preceding the completion of the judicial~~  
19       ~~or nonjudicial power of sale foreclosure. In no event shall the~~  
20       ~~amount of the special assessment exceed the sum of \$3,600.~~

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



1       ~~"Completion" means:~~

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

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

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

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

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

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

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

13      ~~(5) Any fees or costs related to the collection or~~  
14      ~~enforcement of the assessment, including attorneys'~~  
15      ~~fees and court costs.~~

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

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

19      (1) The circuit court may assess the amount due to the  
20      association without the intervention of a jury and  
21      shall render judgment for the amount awarded in the  
22      foreclosure of the association's lien; provided that



1 execution may be issued on the judgment as ordered by  
2 the court;

3 (2) All mortgage creditors whose names are or can be  
4 discovered by the association foreclosing its lien  
5 shall be made parties to the action; provided that the  
6 foreclosure of the association's lien shall not  
7 extinguish priority liens as described in subsection  
8 (a);

9 (3) Foreclosure of the association's lien shall operate to  
10 extinguish subsequent liens on the same property  
11 without forcing prior lienors to their right of  
12 recovery; provided that proceeds in excess of the  
13 amounts secured by prior liens and the association's  
14 lien shall be payable to the unit owner or as  
15 otherwise determined by the court in accordance with  
16 principles of equity; and

17 (4) Any party may assert any legal or equitable defense to  
18 the foreclosure of the association's lien; provided  
19 that a dispute as to the amount due to the association  
20 shall not be allowed as a defense to the action but  
21 shall be subject to the remedies provided in section  
22 514B-B.



1        (c) Nonjudicial power of sale foreclosure of the  
2 association's lien is authorized in accordance with this  
3 subsection; provided that nonjudicial foreclosure of the  
4 association's lien is authorized whether or not a power of sale  
5 is stated in the association's declaration or bylaws; and  
6 provided further that this section shall control over any  
7 conflicting power of sale provisions in the declaration or  
8 bylaws of an association:

9        (1) The association shall be represented by an attorney  
10 who is licensed to practice law in the State and is  
11 physically located in the State;

12        (2) The attorney shall give notice of the association's  
13 intention to foreclose its lien by:

14        (A) Mailing notice, by both first class mail and by  
15 certified mail, return receipt requested, not  
16 fewer than twenty-one days before the day of  
17 sale, to:

18        (i) The unit owner, at the owner's address as  
19 shown in the records of the association and,  
20 if different, at the address of the unit  
21 being foreclosed;



- 1            (ii) All mortgage creditors whose names are or  
2            can be discovered by the association;
- 3            (iii) The director of taxation;
- 4            (iv) The director of finance of the county where  
5            the unit is located; and
- 6            (v) The planned community association in which  
7            the unit is located of which the unit owner  
8            is a member, if any;
- 9            (B) Posting notice on the front door or other  
10           conspicuous location on the unit not fewer than  
11           twenty-one days before the day of sale; and
- 12           (C) Publishing notice three times, once in each of  
13           three successive weeks, in a newspaper having  
14           general circulation in the county where the unit  
15           is located, the last publication to be not fewer  
16           than fourteen days before the day of sale; and
- 17           (3) Within thirty days after selling the unit, the  
18           attorney shall record an affidavit at the bureau of  
19           conveyances or the land court to be recorded and  
20           indexed pursuant to chapter 501 or 502, as  
21           appropriate, setting forth fully and particularly the  
22           association's acts consistent with this section;



1 provided that an affidavit recorded pursuant to this  
2 paragraph shall include a copy of the notice of sale  
3 as an exhibit and may include other evidence of  
4 compliance with the requirements of this section; and  
5 provided further that the affidavit or a certified  
6 copy of the affidavit shall be admitted as evidence of  
7 the completion of the foreclosure if it demonstrates  
8 that the unit was sold in compliance with the  
9 procedures established in this section.

10 (d) The notice required by subsection (c) shall identify  
11 the association foreclosing its lien, contain a description of  
12 the unit being foreclosed upon, and contain a statement of the  
13 time and place proposed for the sale of the unit no sooner than  
14 four weeks from the date when first advertised.

15 (e) Any sale for which notice has been given pursuant to  
16 subsection (c) may be postponed from time to time by public  
17 announcement made by a person acting on behalf of the  
18 association. The date and time of the postponed auction, or  
19 information that the auction was canceled, shall be disclosed to  
20 any person entitled to notice pursuant to subsection (c) who  
21 requests that information.





1       (f) An association that holds a lien on a unit may  
2 purchase the unit at auction and may satisfy the bid price  
3 requirement of subsection (g) by credit bidding up to the amount  
4 of the association's lien.

5       (g) Except as provided in subsection (f), a down payment  
6 of no more than ten per cent of the highest successful bid  
7 price, but not more, shall be paid to the association by the  
8 successful bidder immediately after the completion of the  
9 auction sale; provided that the successful bidder shall remain  
10 liable to the association for the balance of the highest  
11 successful bid price and for damages, if any, that result from  
12 the successful bidder's failure, neglect, or refusal to complete  
13 the purchase. The successful bidder's interest in the unit  
14 shall be subject to the right, title, and interest of any prior  
15 liens as defined in subsection (a) of this section.

16       (h) Any person entitled to notice pursuant to subsection  
17 (c) may make a request, prior to the auction, for the amount to  
18 cure the default, together with an estimated amount of the  
19 foreclosing association's attorneys' fees and costs, and all  
20 other fees and costs estimated to be incurred by the foreclosing  
21 association related to the default. The association shall



1 disclose the requested information within five business days  
2 after the request.

3       (i) The nonjudicial foreclosure of an association's lien  
4 on a owner-occupied unit shall be stayed for a single forty-five  
5 day period if the unit owner notifies the association or its  
6 attorney by certified mail, return receipt requested, or by  
7 acknowledged hand delivery within five days after receipt of  
8 notice of the association's intention to foreclose its lien that  
9 the owner intends to and has the financial capacity to pay all  
10 sums claimed to be due by the association within forty-five days  
11 following the date of notice given by the owner pursuant to this  
12 subsection. The association's board of directors shall give due  
13 consideration to a payment plan proposed by an owner-occupant if  
14 the plan provides for:

15       (1) Timely payment of all assessments that become due  
16 after the date that the payment plan is proposed; and

17       (2) Additional monthly payments of an amount sufficient to  
18 cure the default within a reasonable period under the  
19 circumstances as determined by the board of directors  
20 in its reasonable exercise of discretion; provided  
21 that a period of six to twelve months may be  
22 considered reasonable if the owner demonstrates that



1           the amount of the payments constitute all of the  
2           owner's discretionary income;  
3 unless the owner has been delinquent in payment of assessments  
4 due to the association in the prior twenty-four months. An  
5 owner's failure to strictly perform any agreed upon payment plan  
6 shall entitle an association to pursue its remedies without  
7 further delay.

8           (j) The association shall disclose the sale price of the  
9 foreclosed unit once auctioned upon the request of any person  
10 entitled to notice pursuant to subsection (c). If the  
11 association purchases a unit in foreclosure and proposes to  
12 re-sell the unit, the association shall disclose in writing to  
13 all prospective purchasers the recorded amounts and holders of  
14 all prior liens as defined in subsection (a) of this section on  
15 the unit."

16           SECTION 8. Section 603-21.7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§603-21.7 Nonjury cases.** The several circuit courts  
19 shall have jurisdiction, without the intervention of a jury  
20 except as provided by statute, as follows:

21           (a) Of actions or proceedings:



- 1           (1) For the determination and declaration of heirs of  
2           deceased persons, which jurisdiction shall be in  
3           addition to the probate jurisdiction of the court;  
4           (2) For the admeasurement of dower and curtesy, or the  
5           partition of real estate;  
6           (3) For enforcing and regulating the execution of trusts,  
7           whether the trusts relate to real or personal estate,  
8           for the foreclosure of mortgages, for the foreclosure  
9           of liens by a condominium association subject to  
10           chapter 514A or 514B or a planned community  
11           association subject to chapter 421J, for the specific  
12           performance of contracts, and except when a different  
13           provision is made they shall have original and  
14           exclusive jurisdiction of all other cases in the  
15           nature of suits in equity, according to the usages and  
16           principles of courts of equity;  
17           (b) Of actions or proceedings in or in the nature of  
18           habeas corpus, prohibition, mandamus, quo warranto, and all  
19           other proceedings in or in the nature of applications for writs  
20           directed to courts of inferior jurisdiction, to corporations and  
21           individuals, as may be necessary to the furtherance of justice  
22           and the regular execution of the law."



1 SECTION 9. Act 205, Session Laws of Hawaii 2008, as  
2 amended by section 2 of Act 9, Session Laws of Hawaii 2009, is  
3 amended by amending section 5 to read as follows:

4 "SECTION 5. This Act shall take effect upon its approval [~~7~~  
5 and]; provided that section 2 of this Act shall be repealed on  
6 June 30, 2011 [~~7~~], and section 514B-161, Hawaii Revised Statutes,  
7 shall be reenacted in the form in which it read on the day prior  
8 to the effective date of this Act."

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

11 SECTION 11. This Act shall take effect on July 1, 2011;  
12 provided that section 9 of this Act shall take effect on  
13 June 29, 2011.



**Report Title:**

Mortgage Foreclosures; Task Force

**Description:**

Authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure for outstanding liens; authorizes payment plans for outstanding liens under certain conditions; allows an association to acquire a unit through credit bidding at auction; specifies notice requirements; prohibits foreclosure of certain junior liens during the pendency of foreclosure on a mortgage. (SD2)

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

