

JAN 26 2011

A BILL FOR AN ACT

RELATING TO ASSOCIATION FEES.

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

1 SECTION 1. Section 514A-90, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (b) to read:

4 "(b) Except as provided in subsection (g), when the
5 mortgagee of a mortgage of record or other purchaser of an
6 apartment obtains title to the apartment as a result of
7 foreclosure of the mortgage[7] or as a result of a short sale of
8 an apartment that is a distressed property as defined by section
9 480E-2, the acquirer of title and the acquirer's successors and
10 assigns shall not be liable for the share of the common expenses
11 or assessments by the association of apartment owners chargeable
12 to the apartment which became due prior to the acquisition of
13 title to the apartment by the acquirer. The unpaid share of
14 common expenses or assessments shall be deemed to be common
15 expenses collectible from all of the apartment owners, including
16 the acquirer and the acquirer's successors and assigns. The
17 mortgagee of record or other purchaser of the apartment shall be



1 deemed to acquire title and shall be required to pay the
2 apartment's share of common 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
8 power of sale foreclosure pursuant to section 667-5;
9 or

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



1 mortgagee of record or other purchaser of the apartment shall be
2 deemed to acquire title upon recordation of the instrument of
3 conveyance."

4 2. By amending subsection (g) to read:

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[7] or in a
10 short sale of an apartment that is a distressed property as
11 defined by section 480E-2, purchases a delinquent apartment;
12 provided that:

13 (1) A purchaser who holds a mortgage on a delinquent
14 apartment that was recorded prior to the filing of a
15 notice of lien by the association of apartment owners
16 and who acquires the delinquent apartment through a
17 judicial or nonjudicial foreclosure proceeding[7] or
18 through a short sale of an apartment that is a
19 distressed property as defined by section 480E-2,
20 including by purchasing the delinquent apartment at a
21 foreclosure auction, shall not be obligated to make,



1 nor be liable for, payment of the special assessment
2 as provided for under this subsection; and

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

18 3. By amending subsection (h) to read:

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



1 or nonjudicial power of sale foreclosure[+] or the short sale.
2 In no event shall the amount of the special assessment exceed
3 the sum of \$3,600[+] or include any fees or charges other than
4 unpaid regular monthly common assessments as authorized by this
5 subsection."

6 4. By amending subsection (i) to read:

7 "(i) For purposes of subsections (g) and (h), the
8 following definitions shall apply:

9 "Completion" means:

- 10 (1) In a nonjudicial power of sale foreclosure, when the
11 affidavit required under section 667-5 is filed; and
12 (2) In a judicial foreclosure[+] or a short sale of an
13 apartment that is a distressed property as defined by
14 section 480E-2, when a purchaser is deemed to acquire
15 title pursuant to subsection (b).

16 "Regular monthly common assessments" shall not include:

- 17 (1) Any other special assessment, except for a special
18 assessment imposed on all apartments as part of a
19 budget adopted pursuant to section 514A-83.6;
20 (2) Late charges, fines, or penalties;
21 (3) Interest assessed by the association of apartment
22 owners;



- 1 (4) Any lien arising out of the assessment; or
- 2 (5) Any fees or costs related to the collection or
- 3 enforcement of the assessment, including attorneys'
- 4 fees and court costs.

5 "Short sale" means the sale of a property where the
6 mortgagee or lender agrees to release the lien that is secured
7 to the property upon receipt of a lesser amount than is owed on
8 the mortgage."

9 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (b) to read:

12 "(b) Except as provided in subsection (g), when the
13 mortgagee of a mortgage of record or other purchaser of a unit
14 obtains title to the unit as a result of foreclosure of the
15 mortgage^[7] or as a result of a short sale of an apartment that is
16 a distressed property as defined by section 480E-2, the acquirer
17 of title and the acquirer's successors and assigns shall not be
18 liable for the share of the common expenses or assessments by
19 the association chargeable to the unit which became due prior to
20 the acquisition of title to the unit by the acquirer. The
21 unpaid share of common expenses or assessments shall be deemed
22 to be common expenses collectible from all of the unit owners,



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

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

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

9 (3) Thirty days after the public sale in a nonjudicial
10 power of sale foreclosure pursuant to section 667-5;
11 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
16 delayed past the thirty-six days specified in paragraph (1), the
17 sixty days specified in paragraph (2), or the thirty days
18 specified in paragraph (3), when a person who appears at the
19 hearing on the motion or a party to the foreclosure action
20 requests reconsideration of the motion or order to confirm sale,
21 objects to the form of the proposed order to confirm sale,
22 appeals the decision of the court to grant the motion to confirm



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

6 2. By amending subsection (g) to read:

7 "(g) Subject to this subsection, and subsections (h) and
8 (i), the board may specially assess the amount of the unpaid
9 regular monthly common assessments for common expenses against a
10 person who, in a judicial or nonjudicial power of sale
11 foreclosure[7] or in a short sale of an apartment that is a
12 distressed property as defined by section 480E-2, purchases a
13 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[7] or in a short sale of an
19 apartment that is a distressed property as defined by
20 section 480E-2, including purchasing the delinquent
21 unit at a foreclosure auction, shall not be obligated



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

3 (2) A person who subsequently purchases the delinquent
4 unit from the mortgagee [~~referred~~] who purchased the
5 delinquent apartment pursuant 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 3. By amending subsection (h) to read:

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



1 or nonjudicial power of sale foreclosure[-] or the short sale.

2 In no event shall the amount of the special assessment exceed
3 the sum of \$3,600."

4 4. By amending subsection (i) to read:

5 "(i) For purposes of subsections (g) and (h), the
6 following definitions shall apply, unless the context requires
7 otherwise:

8 "Completion" means:

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

11 (2) In a judicial foreclosure[-] or a short sale of an
12 apartment that is a distressed property as defined by
13 section 480E-2, when a purchaser is deemed to acquire
14 title pursuant to subsection (b).

15 "Regular monthly common assessments" does not include:

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

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

20 (3) Interest assessed by the association;

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



1 (5) Any fees or costs related to the collection or
 2 enforcement of the assessment, including attorneys'
 3 fees and court costs.

4 "Short sale" means the sale of a property where the
 5 mortgagee or lender agrees to release the lien that is secured
 6 to the property upon receipt of a lesser amount than is owed on
 7 the mortgage."

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

10 SECTION 4. This Act shall take effect July 1, 2011.

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Report Title:

Condominiums; Association Fees; Short Sales

Description:

Imposes a cap and limitations on the amount and type of delinquent association fees that a condominium association may collect from the purchaser of an apartment that is a distressed property after a short sale.

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

