
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 mortgages.

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 rental
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. 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 less than twenty-one days before the day of sale,
9 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; and

19 (B) Posting notice on the front door or other
20 conspicuous location on the unit not less 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 less
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 shall be admitted as evidence of the
18 completion of the foreclosure if it demonstrates that
19 the unit was sold in compliance with the procedures
20 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) If a unit owner notifies the association or its
13 attorney by certified mail return receipt requested or by hand-
14 delivery within five business days following receipt of the
15 information requested pursuant to subsection (h) that it intends
16 to cure the default, the association shall allow forty-five
17 calendar days to allow the unit owner to cure the delinquency.
18 The association shall not reject a reasonable payment plan for
19 cure of the default; provided that a reasonable plan shall
20 require the owner to pay at a minimum the current maintenance
21 fee and some amount owed on the past due balance. From and
22 after the date that the unit owner gives written notice to the



1 association of its intent to cure the delinquency, any
2 nonjudicial foreclosure of the lien shall be stayed pending the
3 forty-five day period or a longer period that is agreed upon by
4 the parties.

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

13 (k) Any dispute that arises under this section shall be
14 subject to the alternative dispute resolution process under
15 section 514B-161."

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

19 "§514A-A Association fiscal matters; lien following
20 mortgage foreclosure. (a) Subject to this subsection and
21 subsections (b) and (c), the board may specially assess the
22 amount of the unpaid regular monthly common assessments for



1 common expenses against a person who, in a judicial or
2 nonjudicial foreclosure, purchases a delinquent unit; provided
3 that:

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

13 (2) A person who subsequently purchases the delinquent
14 unit from the mortgagee described in paragraph (1)
15 shall be obligated to make and shall be liable for
16 payment of the special assessment provided for under
17 this subsection; provided that the mortgagee or
18 subsequent purchaser may require the association to
19 provide at no charge a notice of the association's
20 intent to claim lien against the delinquent unit for
21 the amount of the special assessment prior to the
22 subsequent purchaser's acquisition of title to the



1 delinquent unit; provided further that the notice
2 shall state the amount of the special assessment, how
3 that amount was calculated, and the legal description
4 of the unit.

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

11 (c) After any judicial or nonjudicial foreclosure
12 proceeding in which the association acquires title to the unit,
13 any excess rental income received by the association from the
14 unit shall be paid to existing lienors based on priority of
15 lien, and not on a pro rata basis. For purposes of this
16 subsection, excess rental income shall be any net income
17 received by the association after paying, crediting, or
18 reimbursing the association or a third party for:

- 19 (1) The special assessment for delinquency assessed
20 pursuant to subsections (a) and (b);
21 (2) Any maintenance fee delinquency against the unit;



- 1 (3) Attorneys' fees and other collection costs related to
- 2 the association's foreclosure of the unit; or
- 3 (4) Any costs incurred by the association for the rental,
- 4 repair, maintenance, or rehabilitation of the unit
- 5 while the association is in possession of the unit
- 6 including monthly association maintenance fees,
- 7 management fees, real estate commissions, cleaning and
- 8 repair expenses for the unit, and general excise taxes
- 9 paid on rental income;

10 provided that the special assessment for delinquent maintenance
11 fees under paragraph (1) shall be paid, credited, or reimbursed
12 first.

13 (d) For purposes of subsections (a) and (b), the following
14 definitions shall apply, unless the context requires otherwise:

15 "Completion" means:

16 (1) In a nonjudicial power of sale foreclosure, when the
17 affidavit required under clause 514A-90(c)(3) is
18 filed; and

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

21 "Regular monthly common assessments" shall not include:



- 1 (1) Any special assessment, except for a special
2 assessment imposed on all units as part of a budget
3 adopted pursuant to section 514A-83.6;
- 4 (2) Late charges, fines, or penalties;
- 5 (3) Interest assessed by the association;
- 6 (4) Any lien arising out of the assessment; or
- 7 (5) Any fees or costs related to the collection or
8 enforcement of the assessment including attorneys'
9 fees and court costs;
- 10 (e) The cost of a release of any lien imposed by this
11 section shall be paid by the party requesting the release.
- 12 (f) Except as provided in subsection (a), 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, the acquirer of title and the acquirer's successors
16 and assigns shall not be liable for the share of common expenses
17 or assessments by the association chargeable to the unit which
18 became due prior to the acquisition of title to the unit by the
19 acquirer. The unpaid share of common expenses or assessments
20 shall be deemed to be common expenses collectible from all of
21 the unit owners, including the acquirer and the acquirer's
22 successors and assigns. The mortgagee of record or other



1 purchaser of the unit shall be deemed to acquire title and shall
2 be required to pay the unit's share of common expenses and
3 assessments beginning:

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

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

8 (3) Thirty days after the public sale in a nonjudicial or
9 power of sale foreclosure pursuant to chapter 667; 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 unit shall not be deemed to acquire title
13 under paragraph (1), (2), or (3) if transfer of title is delayed
14 past the thirty-six days specified in paragraph (1), the sixty
15 days specified in paragraph (2), or the thirty days specified in
16 paragraph (3) when a person who appears at the hearing on the
17 motion or a party to the foreclosure action requests
18 reconsideration of the motion or order to confirm sale, objects
19 to the form of the proposed order to confirm sale, appeals the
20 decision of the court to grant the motion to confirm sale, or
21 the debtor or mortgagor declares bankruptcy or is involuntarily
22 placed into bankruptcy. In any such case, the mortgagee of



1 record or other purchaser of the unit shall be deemed to acquire
2 title upon recordation of the instrument of conveyance.

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

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

- 9 (1) The amount of regular monthly common assessments or
10 special assessments included in the assessment,
11 including the due date of each amount claimed;
12 (2) The amount of any penalty, late fee, lien filing fee,
13 and any other charge included in the assessment;
14 (3) The amount of attorneys' fees and costs, if any,
15 included in the assessment;
16 (4) That under Hawaii law, a unit owner has no right to
17 withhold assessments for any reason;
18 (5) That a unit owner has a right to demand mediation or
19 arbitration to resolve disputes about the amount or
20 validity of an association's assessment; provided that
21 the unit owner immediately pays the assessment in full
22 and keeps assessments current; and



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

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

9 (1) File an action in small claims court; or
10 (2) Require the association to mediate to resolve any
11 disputes concerning the amount or validity of the
12 association's claim.

13 (d) Any dispute remaining after mediation pursuant to
14 subsection (c) shall be subject to arbitration pursuant to
15 section 514A-121, upon demand by the association or by the unit
16 owner; provided that a unit owner may only file for arbitration
17 if all amounts claimed by the association are paid in full on or
18 before the date of filing. If the unit owner fails to keep all
19 association assessments current during the arbitration, the
20 association may ask the arbitrator to temporarily suspend the
21 arbitration proceedings. If the unit owner pays all association
22 assessments within thirty days of the date of suspension, the



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

7 **§514A-C Association fiscal matters; additional remedies.**

8 (a) In conjunction with or as an alternative to foreclosure
9 proceedings under section 514A-90, where a unit is owner-
10 occupied, the association may authorize its managing agent or
11 board to, after sixty days' written notice to the unit owner and
12 to the unit's first mortgagee of the nonpayment of the unit's
13 share of the common expenses, terminate the delinquent unit's
14 access to the common elements and cease supplying a delinquent
15 unit with any and all services normally supplied or paid for by
16 the association. Any terminated services and privileges shall
17 be restored upon payment of all delinquent assessments but need
18 not be restored until payment in full is received.

19 (b) Before the board or managing agent may take the
20 actions permitted under subsection (a), the board shall adopt a
21 written policy providing for the actions and have the policy
22 approved by a majority vote of the unit owners at an annual or



1 special meeting of the association or by the written consent of
2 a majority of the unit owners."

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

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

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



1 (2) A person who subsequently purchases the delinquent
2 unit from the mortgagee described 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; provided that the mortgagee or
6 subsequent purchaser may require the association to
7 provide at no charge a notice of the association's
8 intent to claim lien against the delinquent unit for
9 the amount of the special assessment prior to the
10 subsequent purchaser's acquisition of title to the
11 delinquent unit; provided further that the notice
12 shall state the amount of the special assessment, how
13 that amount was calculated, and the legal description
14 of the unit.

15 (b) The amount of the special assessment assessed under
16 subsection (a) 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 foreclosure. In no event shall the amount of the
20 special assessment exceed the sum of \$3,600.

21 (c) After any judicial or nonjudicial foreclosure
22 proceeding in which the association acquires title to the unit,



1 any excess rental income received by the association from the
2 unit shall be paid to existing lienors based on priority of
3 lien, and not on a pro rata basis. For purposes of this
4 subsection, excess rental income shall be any net income
5 received by the association after paying, crediting, or
6 reimbursing the association or a third party for:

- 7 (1) The special assessment for delinquency assessed
8 pursuant to subsections (a) and (b);
- 9 (2) Any maintenance fee delinquency against the unit;
- 10 (3) Attorneys' fees and other collection costs related to
11 the association's foreclosure of the unit; or
- 12 (4) Any costs incurred by the association for the rental,
13 repair, maintenance, or rehabilitation of the unit
14 while the association is in possession of the unit
15 including monthly association maintenance fees,
16 management fees, real estate commissions, cleaning and
17 repair expenses for the unit, and general excise taxes
18 paid on rental income;

19 provided that the special assessment for delinquent maintenance
20 fees under paragraph (1) shall be paid, credited, or reimbursed
21 first.



1 (d) For purposes of subsections (a) and (b), the following
2 definitions shall apply, unless the context requires otherwise:

3 "Completion" means:

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

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

9 "Regular monthly common assessments" shall not include:

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

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

14 (3) Interest assessed by the association;

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 attorneys'
18 fees and court costs;

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

21 (f) Except as provided in subsection (a), when the
22 mortgagee of a mortgage of record or other purchaser of a unit



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

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

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

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

19 (4) Upon the recording of the instrument of conveyance,
20 whichever occurs first; provided that the mortgagee of record or
21 other purchaser of the unit shall not be deemed to acquire title
22 under paragraph (1), (2), or (3) if transfer of title is delayed



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

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

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

18 (1) The amount of regular monthly common assessments or
19 special assessments included in the assessment,
20 including the due date of each amount claimed;

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



- 1 (3) The amount of attorneys' fees and costs, if any,
2 included in the assessment;
- 3 (4) That under Hawaii law, a unit owner has no right to
4 withhold assessments for any reason;
- 5 (5) That a unit owner has a right to demand mediation or
6 arbitration to resolve disputes about the amount or
7 validity of an association's assessment; provided that
8 the unit owner immediately pays the assessment in full
9 and keeps assessments current; and
- 10 (6) That payment in full of the assessment does not
11 prevent the owner from contesting the assessment or
12 receiving a refund of amounts not owed;
- 13 provided that nothing in this section shall limit the rights of
14 an owner to the protection of all fair debt collection
15 procedures mandated under federal and state law.
- 16 (c) After a unit owner pays an association the full amount
17 claimed by the association, the unit owner may:
- 18 (1) File an action in small claims court; or
19 (2) Require the association to mediate to resolve any
20 disputes concerning the amount or validity of the
21 association's claim.



1 (d) Any dispute remaining after mediation pursuant to
2 subsection (c) shall be subject to arbitration pursuant to
3 section 514B-162, upon demand by the association or by the unit
4 owner; provided that a unit owner may only file for arbitration
5 if all amounts claimed by the association are paid in full on or
6 before the date of filing. If the unit owner fails to keep all
7 association assessments current during the arbitration, the
8 association may ask the arbitrator to temporarily suspend the
9 arbitration proceedings. If the unit owner pays all association
10 assessments within thirty days of the date of suspension, the
11 unit owner may ask the arbitrator to recommence the arbitration
12 proceedings. If the owner fails to pay all association
13 assessments by the end of the thirty-day period, the association
14 may ask the arbitrator to dismiss the arbitration proceedings.
15 The unit owner shall be entitled to a refund of any amounts paid
16 to the association that are not owed.

17 **§514B-C Association fiscal matters; additional remedies.**

18 (a) In conjunction with or as an alternative to foreclosure
19 proceedings under section 514B-146, where a unit is owner-
20 occupied, the association may authorize its managing agent or
21 board to, after sixty days' written notice to the unit owner and
22 to the unit's first mortgagee of the nonpayment of the unit's



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

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

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

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



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

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



1 process; provided that a junior lienholder shall be permitted to
2 initiate or continue with a foreclosure if permitted by the
3 resolution document."

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

6 "§514A-90 [~~Priority of lien.~~] Association fiscal matters;
7 lien for assessments. (a) All sums assessed by [~~the~~] an
8 association of apartment owners but unpaid for the share of the
9 common expenses chargeable to any apartment constitute a lien on
10 the apartment prior to all other liens, except:

- 11 (1) Liens for taxes and assessments lawfully imposed by
12 governmental authority against the apartment; and
13 (2) All sums unpaid on any mortgage of record that was
14 recorded prior to the recordation of notice of a lien
15 by the association of apartment owners, and costs and
16 expenses including attorneys' fees provided in such
17 mortgages.

18 The lien of [~~the~~] an association of apartment owners may be
19 foreclosed by action or by nonjudicial or power of sale
20 foreclosure procedures set forth in [~~chapter 667,~~] this section by
21 the managing agent or board of directors, acting on behalf of the
22 association of apartment owners [~~, in like manner as a mortgage of~~



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

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



1 ~~apartment owners, including the acquirer and the acquirer's~~
2 ~~successors and assigns. The mortgagee of record or other~~
3 ~~purchaser of the apartment shall be deemed to acquire title and~~
4 ~~shall be required to pay the apartment's share of common expenses~~
5 ~~and 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~~
11 ~~power of sale foreclosure pursuant to section 667-5;~~

12 ~~or~~

13 ~~(4) Upon the recording of the instrument of conveyance,~~
14 ~~whichever occurs first, provided that the mortgagee of record or~~
15 ~~other purchaser of the apartment shall not be deemed to acquire~~
16 ~~title under paragraph (1), (2), or (3), if transfer of title is~~
17 ~~delayed past the thirty six days specified in paragraph (1), the~~
18 ~~sixty days specified in paragraph (2), or the thirty days~~
19 ~~specified in paragraph (3), when a person who appears at the~~
20 ~~hearing on the motion or a party to the foreclosure action~~
21 ~~requests reconsideration of the motion or order to confirm sale,~~
22 ~~objects to the form of the proposed order to confirm sale,~~



1 ~~appeals the decision of the court to grant the motion to confirm~~
2 ~~sale, or the debtor or mortgagor declares bankruptcy or is~~
3 ~~involuntarily placed into bankruptcy. In any such case, the~~
4 ~~mortgagee of record or other purchaser of the apartment shall be~~
5 ~~deemed to acquire title upon recordation of the instrument of~~
6 ~~conveyance.~~

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

11 ~~(1) The amount of common expenses included in the~~
12 ~~assessment, including the due date of each amount~~
13 ~~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, an apartment owner has no right~~
19 ~~to withhold assessments for any reason;~~

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



1 ~~provided the apartment owner immediately pays the~~
2 ~~assessment in full and keeps assessments current, and~~
3 ~~(6) That payment in full of the assessment shall not~~
4 ~~prevent the owner from contesting the assessment or~~
5 ~~receiving a refund of amounts not owed.~~

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

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



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

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

18 ~~(f) Before the board of directors or managing agent may~~
19 ~~take the actions permitted under subsection (e), the board shall~~
20 ~~adopt a written policy providing for such actions and have the~~
21 ~~policy approved by a majority vote of the apartment owners at an~~



1 ~~annual or special meeting of the association or by the written~~
2 ~~consent of a majority of the apartment owners.~~

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

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

18 ~~(2) A person who subsequently purchases the delinquent~~
19 ~~apartment from the mortgagee referred to in paragraph~~
20 ~~(1) shall be obligated to make, and shall be liable~~
21 ~~for, payment of the special assessment provided for~~
22 ~~under this subsection; provided that the mortgagee or~~



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

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

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

18 ~~"Completion" means:~~

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



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

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

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

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

10 ~~(3) Interest assessed by the association of apartment~~
11 ~~owners;~~

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~~
15 ~~attorneys' fees and court costs.]~~

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

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



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

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

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

21 (c) Nonjudicial power of sale foreclosure of the
22 association's lien is authorized in accordance with this



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

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

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

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

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

20 (ii) All mortgage creditors whose names are or
21 can be discovered by the association;

22 (iii) The director of taxation;



1 (iv) The director of finance of the county where
2 the unit is located; and

3 (v) The planned community association in which
4 the unit is located, if any;

5 (B) Posting notice on the front door or other
6 conspicuous location on the unit not less than
7 twenty-one days before the day of sale; and

8 (C) Publishing notice three times, once in each of
9 three successive weeks, in a newspaper having
10 general circulation in the county where the unit
11 is located, the last publication to be not less
12 than fourteen days before the day of sale; and

13 (3) Within thirty days after selling the unit, the
14 attorney shall record an affidavit at the bureau of
15 conveyances or the land court to be recorded and
16 indexed according to chapter 501 or 502, as
17 appropriate, setting forth fully and particularly the
18 association's acts consistent with this section;
19 provided that an affidavit recorded pursuant to this
20 paragraph shall include a copy of the notice of sale
21 as an exhibit and may include other evidence of
22 compliance with the requirements of this section; and



1 provided further that the affidavit or a certified
2 copy shall be admitted as evidence of the completion
3 of the foreclosure if it demonstrates that the unit
4 was sold in compliance with the procedures established
5 in this section.

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

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

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



1 (g) Except as provided in subsection (f), a down payment
2 of no more than ten per cent of the highest successful bid price
3 shall be paid to the association by the successful bidder
4 immediately after the completion of the auction sale; provided
5 that the successful bidder shall remain liable to the
6 association for the balance of the highest successful bid price
7 and for damages, if any, that result from the successful
8 bidder's failure, neglect, or refusal to complete the purchase.
9 The successful bidder's interest in the unit shall be subject to
10 the right, title, and interest of any prior liens as defined in
11 subsection (a) of this section.

12 (h) Any person entitled to notice pursuant to subsection
13 (c) may make a request, prior to the auction, for the amount to
14 cure the default, together with an estimated amount of the
15 foreclosing association's attorneys' fees and costs, and all
16 other fees and costs estimated to be incurred by the foreclosing
17 association related to the default. The association shall
18 disclose the requested information within five business days
19 after the request.

20 (i) If a unit owner notifies the association or its
21 attorney by certified mail return receipt requested or by hand-
22 delivery within five business days following receipt of the



1 information requested pursuant to subsection (h) that it intends
2 to cure the default, the association shall allow forty-five
3 calendar days to allow the unit owner to cure the delinquency.
4 The association shall not reject a reasonable payment plan for
5 cure of the default; provided that a reasonable plan shall
6 require the owner to pay at a minimum the current maintenance
7 fee and some amount owed on the past due balance. From and
8 after the date that the unit owner gives written notice to the
9 association of its intent to cure the delinquency, any
10 nonjudicial foreclosure of the lien shall be stayed pending the
11 forty-five day period or a longer period that is agreed upon by
12 the parties.

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



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

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

6 "(a) If an apartment owner or the board of directors
7 requests mediation of a dispute involving the interpretation or
8 enforcement of the association of apartment owners' declaration,
9 bylaws, house rules, or a matter involving section 514A-82(b)(1)
10 to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6,
11 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5,
12 514A-84, 514A-84.5, [~~or~~] 514A-90, or 514A-92.5, the other party in
13 the dispute shall be required to participate in mediation. Each
14 party shall be wholly responsible for its own costs of
15 participating in mediation, unless at the end of the mediation
16 process, both parties agree that one party shall pay all or a
17 specified portion of the mediation costs. If an apartment owner
18 or the board of directors refuses to participate in the mediation
19 of a particular dispute, a court may take this refusal into
20 consideration when awarding expenses, costs, and attorney's fees."

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



1 "§514B-146 Association fiscal matters; lien for
2 assessments. (a) All sums assessed by [the] an association but
3 unpaid for the share of the common expenses chargeable to any
4 unit shall constitute a lien on the unit with priority over all
5 other liens, except:

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

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

12 The lien of [the] an association may be foreclosed by action or
13 by nonjudicial or power of sale foreclosure procedures set forth
14 in [~~chapter 667,~~] this section by the managing agent or board,
15 acting on behalf of the association[~~, in like manner as a~~
16 ~~mortgage of real property~~]. In any [~~such~~] foreclosure[~~,~~]
17 pursuant to this section, the unit owner shall be required to
18 pay a reasonable rental for the unit, if [~~se~~] provided in the
19 bylaws[~~,~~] of the association, and the plaintiff in the
20 foreclosure shall be entitled to the appointment of a receiver
21 to collect the rental owed. The managing agent or board, acting
22 on behalf of the association, unless prohibited by the



1 declaration, may bid on the unit at foreclosure sale [7] and
2 acquire [~~and~~], hold, lease, mortgage, [~~and~~] or convey the unit.
3 Action to recover a money judgment for unpaid common expenses
4 shall be maintainable without foreclosing or waiving the lien
5 securing the unpaid common expenses owed.

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

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



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

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

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



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

4 ~~(1) The amount of common expenses included in the~~
5 ~~assessment, including the due date of each amount~~
6 ~~claimed;~~

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

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

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

13 ~~(5) That a unit owner has a right to demand mediation or~~
14 ~~arbitration to resolve disputes about the amount or~~
15 ~~validity of an association's assessment, provided the~~
16 ~~unit owner immediately pays the assessment in full and~~
17 ~~keeps assessments current; and~~

18 ~~(6) That payment in full of the assessment does not~~
19 ~~prevent the owner from contesting the assessment or~~
20 ~~receiving a refund of amounts not owed.~~



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

4 ~~(d) A unit owner who pays an association the full amount~~
5 ~~claimed by the association may file in small claims court or~~
6 ~~require the association to mediate to resolve any disputes~~
7 ~~concerning the amount or validity of the association's claim.~~
8 ~~If the unit owner and the association are unable to resolve the~~
9 ~~dispute through mediation, either party may file for arbitration~~
10 ~~under section 514B 162; provided that a unit owner may only file~~
11 ~~for arbitration if all amounts claimed by the association are~~
12 ~~paid in full on or before the date of filing. If the unit owner~~
13 ~~fails to keep all association assessments current during the~~
14 ~~arbitration, the association may ask the arbitrator to~~
15 ~~temporarily suspend the arbitration proceedings. If the unit~~
16 ~~owner pays all association assessments within thirty days of the~~
17 ~~date of suspension, the unit owner may ask the arbitrator to~~
18 ~~recommence the arbitration proceedings. If the owner fails to~~
19 ~~pay all association assessments by the end of the thirty-day~~
20 ~~period, the association may ask the arbitrator to dismiss the~~
21 ~~arbitration proceedings. The unit owner shall be entitled to a~~



1 ~~refund of any amounts paid to the association which are not~~
2 ~~owed.~~

3 ~~(c) In conjunction with or as an alternative to~~
4 ~~foreclosure proceedings under subsection (a), where a unit is~~
5 ~~owner occupied, the association may authorize its managing agent~~
6 ~~or board to, after sixty days' written notice to the unit owner~~
7 ~~and to the unit's first mortgagee of the nonpayment of the~~
8 ~~unit's share of the common expenses, terminate the delinquent~~
9 ~~unit's access to the common elements and cease supplying a~~
10 ~~delinquent unit with any and all services normally supplied or~~
11 ~~paid for by the association. Any terminated services and~~
12 ~~privileges shall be restored upon payment of all delinquent~~
13 ~~assessments but need not be restored until payment in full is~~
14 ~~received.~~

15 ~~(f) Before the board or managing agent may take the~~
16 ~~actions permitted under subsection (c), the board shall adopt a~~
17 ~~written policy providing for such actions and have the policy~~
18 ~~approved by a majority vote of the unit owners at an annual or~~
19 ~~special meeting of the association or by the written consent of~~
20 ~~a majority of the unit owners.~~

21 ~~(g) Subject to this subsection, and subsections (h) and~~
22 ~~(i), the board may specially assess the amount of the unpaid~~



1 ~~regular monthly common assessments for common expenses against a~~
2 ~~person who, in a judicial or nonjudicial power of sale~~
3 ~~foreclosure, purchases a delinquent unit; provided that:~~

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

13 (2) ~~A person who subsequently purchases the delinquent~~
14 ~~unit from the mortgagee referred to in paragraph (1)~~
15 ~~shall be obligated to make, and shall be liable for,~~
16 ~~payment of the special assessment provided for under~~
17 ~~this subsection; and provided further that the~~
18 ~~mortgagee or subsequent purchaser may require the~~
19 ~~association to provide at no charge a notice of the~~
20 ~~association's intent to claim lien against the~~
21 ~~delinquent unit for the amount of the special~~
22 ~~assessment, prior to the subsequent purchaser's~~



1 ~~acquisition of title to the delinquent unit. The~~
2 ~~notice shall state the amount of the special~~
3 ~~assessment, how that amount was calculated, and the~~
4 ~~legal description of the unit.~~

5 ~~(h) The amount of the special assessment assessed under~~
6 ~~subsection (g) shall not exceed the total amount of unpaid~~
7 ~~regular monthly common assessments that were assessed during the~~
8 ~~six months immediately preceding the completion of the judicial~~
9 ~~or nonjudicial power of sale foreclosure. In no event shall the~~
10 ~~amount of the special assessment exceed the sum of \$3,600.~~

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

13 ~~"Completion" means:~~

- 14 ~~(1) In a nonjudicial power of sale foreclosure, when the~~
15 ~~affidavit required under section 667-5 is filed; and~~
16 ~~(2) In a judicial foreclosure, when a purchaser is deemed~~
17 ~~to acquire title pursuant to subsection (b).~~

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

- 19 ~~(1) Any other special assessment, except for a special~~
20 ~~assessment imposed on all units as part of a budget~~
21 ~~adopted pursuant to section 514B-148;~~
22 ~~(2) Late charges, fines, or penalties;~~



- 1 ~~(3) Interest assessed by the association;~~
- 2 ~~(4) Any lien arising out of the assessment; or~~
- 3 ~~(5) Any fees or costs related to the collection or~~
4 ~~enforcement of the assessment, including attorneys'~~
5 ~~fees and court costs.~~
- 6 ~~(j) The cost of a release of any lien filed pursuant to~~
7 ~~this section shall be paid by the party requesting the release.]~~
- 8 (b) In any foreclosure action pursuant to this section:
- 9 (1) The circuit court may assess the amount due to the
10 association without the intervention of a jury and
11 shall render judgment for the amount awarded in the
12 foreclosure of the association's lien; provided that
13 execution may be issued on the judgment as ordered by
14 the court;
- 15 (2) All mortgage creditors whose names are or can be
16 discovered by the association foreclosing its lien
17 shall be made parties to the action; provided that the
18 foreclosure of the association's lien shall not
19 extinguish priority liens as described in subsection
20 (a);
- 21 (3) Foreclosure of the association's lien shall operate to
22 extinguish subsequent liens on the same property



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

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

13 (c) Nonjudicial power of sale foreclosure of the
14 association's lien is authorized in accordance with this
15 subsection; provided that nonjudicial foreclosure of the
16 association's lien is authorized whether or not a power of sale
17 is stated in the association's declaration or bylaws; and
18 provided further that this section shall control over any
19 conflicting power of sale provisions in the declaration or
20 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 less than twenty-one days before the day of sale,
- 9 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 director of taxation;
- 17 (iv) The director of finance of the county where
- 18 the unit is located; and
- 19 (v) The planned community association in which
- 20 the unit is located, if any;



1 (B) Posting notice on the front door or other
2 conspicuous location on the unit not less than
3 twenty-one days before the day of sale; and

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

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



1 was sold in compliance with the procedures established
2 in this section.

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

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

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

19 (g) Except as provided in subsection (f), a down payment
20 of no more than ten per cent of the highest successful bid
21 price, but not more, shall be paid to the association by the
22 successful bidder immediately after the completion of the



1 auction sale; provided that the successful bidder shall remain
2 liable to the association for the balance of the highest
3 successful bid price and for damages, if any, that result from
4 the successful bidder's failure, neglect, or refusal to complete
5 the purchase. The successful bidder's interest in the unit
6 shall be subject to the right, title, and interest of any prior
7 liens as defined in subsection (a) of this section.

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

16 (i) If a unit owner notifies the association or its
17 attorney by certified mail return receipt requested or by hand-
18 delivery within five business days following receipt of the
19 information requested pursuant to subsection (h) that it intends
20 to cure the default, the association shall allow forty-five
21 calendar days to allow the unit owner to cure the delinquency.
22 The association shall not reject a reasonable payment plan for



1 cure of the default; provided that a reasonable plan shall
 2 require the owner to pay at a minimum the current maintenance
 3 fee and some amount owed on the past due balance. From and
 4 after the date that the unit owner gives written notice to the
 5 association of its intent to cure the delinquency, any
 6 nonjudicial foreclosure of the lien shall be stayed pending the
 7 forty-five day period or a longer period that is agreed upon by
 8 the parties.

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

17 (k) Any dispute that arises under this section shall be
 18 subject to the alternative dispute resolution process under
 19 section 514B-161."

20 SECTION 8. Section 514B-161, Hawaii Revised Statutes, is
 21 amended by amending subsections (a) and (b) to read as follows:



1 "(a) If a unit owner or the board of directors requests
2 mediation of a dispute involving the interpretation or
3 enforcement of the association's declaration, bylaws, or house
4 rules, or a matter involving part VI, or if a unit owner or the
5 board of directors of a planned community association subject to
6 chapter 421J requests resolution of a dispute of a matter
7 involving section 421J- , the other party in the dispute shall
8 be required to participate in mediation[-] pursuant to this
9 section. Each party shall be wholly responsible for its own
10 costs of participating in mediation[-] unless at the end of the
11 mediation process[-] both parties agree that one party shall pay
12 all or a specified portion of the mediation costs. If a unit
13 owner or the board of directors refuses to participate in the
14 mediation of a particular dispute, a court may take this refusal
15 into consideration when awarding expenses, costs, and attorneys'
16 fees.

17 (b) Nothing in subsection (a) shall be interpreted to
18 mandate the mediation of any dispute involving:

- 19 (1) Actions seeking equitable relief involving threatened
20 property damage or the health or safety of association
21 members or any other person;



- 1 (2) Actions to collect assessments[+] except actions to
2 foreclose on a lien for unpaid assessments;
- 3 (3) Personal injury claims; or
- 4 (4) Actions against an association, a board, or one or
5 more directors, officers, agents, employees, or other
6 persons for amounts in excess of \$2,500 if insurance
7 coverage under a policy of insurance procured by the
8 association or its board would be unavailable for
9 defense or judgment because mediation was pursued."

10 SECTION 9. Section 603-21.7, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§603-21.7 Nonjury cases.** The several circuit courts
13 shall have jurisdiction, without the intervention of a jury
14 except as provided by statute, as follows:

15 (a) Of actions or proceedings:

- 16 (1) For the determination and declaration of heirs of
17 deceased persons, which jurisdiction shall be in
18 addition to the probate jurisdiction of the court;
- 19 (2) For the admeasurement of dower and curtesy, or the
20 partition of real estate;
- 21 (3) For enforcing and regulating the execution of trusts,
22 whether the trusts relate to real or personal estate,



1 for the foreclosure of mortgages, for the foreclosure
2 of liens by a condominium association subject to
3 chapter 514A or 514B or a planned community
4 association subject to chapter 421J, for the specific
5 performance of contracts, and except when a different
6 provision is made they shall have original and
7 exclusive jurisdiction of all other cases in the
8 nature of suits in equity, according to the usages and
9 principles of courts of equity;

10 (b) Of actions or proceedings in or in the nature of
11 habeas corpus, prohibition, mandamus, quo warranto, and all
12 other proceedings in or in the nature of applications for writs
13 directed to courts of inferior jurisdiction, to corporations and
14 individuals, as may be necessary to the furtherance of justice
15 and the regular execution of the law."

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

18 SECTION 11. This Act shall take effect on July 1, 2011.

19



Report Title:

Mortgage Foreclosures; Task Force

Description:

Authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure for outstanding liens; allows an association to acquire a unit through credit bidding at auction; specifies allocation of excess rental income; authorizes planned community associations to resolve disputes involving liens subject to foreclosure through alternative dispute resolution; specifies notice requirements; prohibits foreclosure of a junior lien during the pendency of foreclosure on a mortgage. (SD1)

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

