

JAN 26 2011

S.B. NO. 1454

A BILL FOR AN ACT

RELATING TO 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 the 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 such mortgages.

14 The lien of the association may be foreclosed by action or by
15 nonjudicial or power of sale foreclosure procedures set forth in
16 chapter 667, by the managing agent or board, acting on behalf of
17 the association, in like manner as a mortgage of real property.

18 In any such foreclosure, the unit owner shall be required to pay



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



1 (3) Any foreclosure of the association's lien shall
2 operate to extinguish subsequent liens on the same
3 property without forcing prior lienors to their right
4 of 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 and power of sale foreclosure of the
16 association's lien are authorized in accordance with the
17 following procedures; provided that nonjudicial foreclosure of
18 the association's lien is authorized whether or not a power of
19 sale is stated in the association's declaration or bylaws; and
20 provided further that the procedures of this section shall
21 control over any 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;
- 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;

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, as appropriate, setting
12 forth fully and particularly the association's acts
13 consistent with this section. An affidavit recorded
14 pursuant to this paragraph shall include a copy of the
15 notice of sale as an exhibit and may include other
16 evidence of compliance with the requirements of this
17 section. The affidavit or a certified copy shall be
18 admitted as evidence of the completion of the
19 foreclosure if it demonstrates that the unit was sold
20 in compliance with the procedures established in this
21 section. The affidavit shall be recorded and indexed



1 by the registrar, in the manner provided in chapter
2 501 or 502, as the case may be.

3 (d) The notice referred to in subsection (c) shall
4 identify the association foreclosing its lien, contain a
5 description of the unit being foreclosed upon, and contain a
6 statement of the time and place proposed for the sale thereof at
7 any time after the expiration of four weeks from the date when
8 first advertised.

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

16 (f) A down payment of ten per cent of the highest
17 successful bid price, but not more, shall be paid to the
18 association by the successful bidder immediately after the
19 completion of the auction sale; provided that the successful
20 bidder shall remain liable to the association for the balance of
21 the highest successful bid price and for damages, if any, that
22 result from the successful bidder's failure, neglect, or refusal



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

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

20 SECTION 2. 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 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 referred to 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; and 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 lien against the delinquent unit for
3 the amount of the special assessment prior to the
4 subsequent purchaser's acquisition of title to the
5 delinquent unit. The notice shall state the amount of
6 the special assessment, how that amount was
7 calculated, and the legal description of the unit.

8 (b) The amount of the special assessment assessed under
9 subsection (a) (2) shall not exceed the total amount of unpaid
10 regular monthly common assessments that were assessed during the
11 six months immediately preceding the completion of the judicial
12 or nonjudicial foreclosure. In no event shall the amount of the
13 special assessment exceed the sum of \$3,600.

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

16 "Completion" means:

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

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

22 "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 514B-148;

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

5 (3) Interest assessed by the association;

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

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

10 (d) The cost of a release of any lien imposed by this
11 section shall be paid by the party requesting the release.

12 (e) 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 subsection
10 514B-146(a); or

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



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

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

8 (b) A unit owner who disputes the amount of an assessment
9 may request a written statement that clearly 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, a unit owner has no right to
18 withhold assessments for any reason;

19 (5) That a unit owner has a right to demand mediation or
20 arbitration to resolve disputes about the amount or
21 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 such 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 SECTION 3. Section 514B-146, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§514B-146 Association fiscal matters; lien for**
8 **assessments.** (a) All sums assessed by the association but
9 unpaid for the share of the common expenses chargeable to any
10 unit shall constitute a lien on the unit with priority over all
11 other liens, except:

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

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

18 The lien of the association may be foreclosed by action or by
19 nonjudicial or power of sale foreclosure procedures set forth in
20 chapter 667, by the managing agent or board, acting on behalf of
21 the association, in like manner as a mortgage of real property.

22 In any such foreclosure, the unit owner shall be required to pay



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

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



1 ~~shall be required to pay the unit's share of common expenses and~~
2 ~~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 unit shall not be deemed to acquire title~~
13 ~~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 unit shall be~~
2 ~~deemed to acquire title upon recordation of the instrument of~~
3 ~~conveyance.~~

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

7 ~~(1) The amount of common expenses included in the~~
8 ~~assessment, including the due date of each amount~~
9 ~~claimed;~~

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

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

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

16 ~~(5) That a unit owner has a right to demand mediation or~~
17 ~~arbitration to resolve disputes about the amount or~~
18 ~~validity of an association's assessment, provided the~~
19 ~~unit owner immediately pays the assessment in full and~~
20 ~~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 ~~Nothing in this section shall limit the rights of an owner to~~
5 ~~the protection of all fair debt collection procedures mandated~~
6 ~~under federal and state law.~~

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



1 ~~period, the association may ask the arbitrator to dismiss the~~
2 ~~arbitration proceedings. The unit owner shall be entitled to a~~
3 ~~refund of any amounts paid to the association which are not~~
4 ~~owed.~~

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

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



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

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

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



1 ~~delinquent unit for the amount of the special~~
2 ~~assessment, prior to the subsequent purchaser's~~
3 ~~acquisition of title to the delinquent unit. The~~
4 ~~notice shall state the amount of the special~~
5 ~~assessment, how that amount was calculated, and the~~
6 ~~legal description of the unit.~~

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

13 ~~(i) For purposes of subsections (g) and (h), 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 section 667-5 is filed; and~~

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

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



- 1 ~~(1) Any other special assessment, except for a special~~
- 2 ~~assessment imposed on all units as part of a budget~~
- 3 ~~adopted pursuant to section 514B-148,~~
- 4 ~~(2) Late charges, fines, or penalties,~~
- 5 ~~(3) Interest assessed by the association,~~
- 6 ~~(4) Any lien arising out of the assessment, or~~
- 7 ~~(5) Any fees or costs related to the collection or~~
- 8 ~~enforcement of the assessment, including attorneys'~~
- 9 ~~fees and court costs.~~
- 10 ~~(j) The cost of a release of any lien filed pursuant to~~
- 11 ~~this section shall be paid by the party requesting the release.]~~

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

13 (1) The circuit court may assess the amount due to the

14 association, without the intervention of a jury, and

15 shall render judgment for the amount awarded in the

16 foreclosure of the association's lien; provided that

17 execution may be issued on the judgment, as ordered by

18 the court;

19 (2) All mortgage creditors whose names are or can be

20 discovered by the association foreclosing its lien

21 shall be made parties to the action; provided that the

22 foreclosure of the association's lien shall not



1 extinguish priority liens as described in subsection
2 (a) of this section;

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

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

17 (c) Nonjudicial and power of sale foreclosure of the
18 association's lien are authorized in accordance with the
19 following procedures; provided that nonjudicial foreclosure of
20 the association's lien is authorized whether or not a power of
21 sale is stated in the association's declaration or bylaws; and
22 provided further that the procedures of this section shall



1 control over any power of sale provisions in the declaration or
2 bylaws of an association:

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

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

8 (A) Mailing notice, by both first class mail and by
9 certified mail, return receipt requested, not
10 less than twenty-one days before the day of sale,
11 to:

12 (i) The unit owner, at the owner's address as
13 shown in the records of the association and,
14 if different, at the address of the unit
15 being foreclosed;

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

18 (iii) The director of taxation;

19 (iv) The director of finance of the county where
20 the unit is located; and

21 (v) The planned community association in which
22 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;

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, as appropriate, setting
12 forth fully and particularly the association's acts
13 consistent with this section. An affidavit recorded
14 pursuant to this paragraph shall include a copy of the
15 notice of sale as an exhibit and may include other
16 evidence of compliance with the requirements of this
17 section. The affidavit or a certified copy shall be
18 admitted as evidence of the completion of the
19 foreclosure if it demonstrates that the unit was sold
20 in compliance with the procedures established in this
21 section. The affidavit shall be recorded and indexed



1 by the registrar, in the manner provided in chapter
2 501 or 502, as the case may be.

3 (d) The notice referred to in subsection (c) shall
4 identify the association foreclosing its lien, contain a
5 description of the unit being foreclosed upon, and contain a
6 statement of the time and place proposed for the sale thereof at
7 any time after the expiration of four weeks from the date when
8 first advertised.

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

16 (f) A down payment of ten per cent of the highest
17 successful bid price, but not more, shall be paid to the
18 association by the successful bidder immediately after the
19 completion of the auction sale; provided that the successful
20 bidder shall remain liable to the association for the balance of
21 the highest successful bid price and for damages, if any, that
22 result from the successful bidder's failure, neglect, or refusal



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

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

20 SECTION 4. Section 603-21.7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§603-21.7 **Nonjury cases.** The several circuit courts
2 shall have jurisdiction, without the intervention of a jury
3 except as provided by statute, as follows:

4 (a) Of actions or proceedings:

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

8 (2) For the admeasurement of dower and curtesy, or the
9 partition of real estate;

10 (3) For enforcing and regulating the execution of trusts,
11 whether the trusts relate to real or personal estate,
12 for the foreclosure of mortgages, for the foreclosure
13 of liens by a condominium association subject to
14 chapter 514B or a planned community association
15 subject to chapter 421J, for the specific performance
16 of contracts, and except when a different provision is
17 made they shall have original and exclusive
18 jurisdiction of all other cases in the nature of suits
19 in equity, according to the usages and principles of
20 courts of equity;

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



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

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

7 SECTION 6. This Act shall take effect on July 1, 2011.
8

INTRODUCED BY:

Rosalyn D. Ball

Clerena K. Michikawa
William J.

Will Lygo

D. J. J. J.
Gal M.

Enzanne Ann Aallard

Acind y Jy



Report Title:

Homeowners Associations; Foreclosure

Description:

Authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure on units within the association for outstanding liens.

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

