

JAN 25 2012

A BILL FOR AN ACT

RELATING TO COLLECTION REMEDIES FOR ASSOCIATIONS.

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

1 SECTION 1. The legislature finds it is in the public
2 interest that condominium associations and planned community
3 associations maintain a sound financial footing, because of
4 their importance to the overall housing market in Hawaii. One
5 method of maintaining the financial health of these associations
6 is by ensuring the timely periodic payment of common expense
7 assessments that fund the operation and management of
8 associations.

9 Condominium associations and planned community associations
10 provide important services to all members, who are consumers,
11 including the maintenance and repair of buildings and grounds.
12 The purchase of insurance, management services, landscaping
13 services, and other required products and services is also
14 funded entirely by common expense assessments.

15 The remedies available to condominium associations and
16 planned community associations for the collection of unpaid
17 common expense assessments should provide due process to



1 delinquent owners and, at the same time, protect consumers who
2 meet their financial obligations to these associations from the
3 unfair burden of having to pay more than their rightful share of
4 common expenses because of the delinquency of other members.

5 An alternative power of sale foreclosure remedy for
6 associations, distinct from remedies available to mortgage
7 creditors, is appropriate in light of the non-profit nature of
8 condominium associations and planned community associations,
9 particularly since these associations lack the opportunity to
10 underwrite risk or to choose their members. Moreover, unlike
11 mortgage lenders, for example, the budget of the community
12 association ensures the integrity of the housing, insurance,
13 management, and other important services for homeowners.

14 The purpose of this Act is to provide an effective and
15 efficient alternative power of sale foreclosure remedy for
16 associations that attends to the reasonable needs of all
17 consumers who own units governed by an association. This Act
18 also amends related provisions regarding association liens.

19 SECTION 2. Chapter 667, Hawaii Revised Statutes, is
20 amended by adding a new part to be appropriately designated and
21 to read as follows:

22 "PART . ASSOCIATION ALTERNATE POWER OF SALE PROCESS



1 **§667-A Alternate power of sale process.** The process in
2 this part is an alternative power of sale process for
3 associations and shall be available to any association.

4 **§667-B Definitions.** (a) As used in this part, unless the
5 context clearly requires otherwise:

6 "Assessment" means and refers to any charge made against a
7 unit or an owner by an association pursuant to statute or the
8 association documents.

9 "Association" has the same meaning as defined in section
10 514B-3 or 421J-2.

11 "Association documents" has the same meaning as defined in
12 section 421J-2, and includes the "declaration" defined in
13 section 514B-3 and "bylaws" described in section 514B-108.

14 "Association lien" has the same meaning as the lien
15 established under section 514B-146 or 421J- or, if broader,
16 as defined in the association documents.

17 "Majority of unit owners" shall be as defined in chapter
18 421J or 514B, or in the association documents.

19 "Owner" has the same meaning as "unit owner" in section
20 514B-3 and as "member" in section 421J-2.

21 "Unit" has the same meaning as defined in sections 514B-3
22 and 421J-2.



1 (b) For the purposes of implementing this chapter, the
2 definitions in chapter 421J shall apply to associations subject
3 to chapter 421J and the definitions in chapter 514B shall apply
4 to associations subject to chapter 514B.

5 **§667-C Notice of default.** An owner whose account has had
6 an unpaid balance for a period of at least sixty days shall be
7 deemed to have notice of a default in the payment of an
8 assessment to an association thirty-five days after the
9 association causes a letter demanding payment of the outstanding
10 balance to be mailed to the owner by first class mail and by
11 certified mail, return receipt requested, at the address of the
12 unit and to the owner's mailing address as shown in the records
13 of the association if different.

14 **§667-D Notice to owner of intention to foreclose by power**
15 **of sale.** (a) The association may give notice of its intention
16 to foreclose by power of sale under this part at any time after
17 the owner is deemed to have notice of the default. Notice of
18 the association's intention to foreclose by power of sale under
19 this part shall be mailed to the owner by first class mail and
20 by certified mail, return receipt requested, to the address of
21 the unit and to the owner's mailing address as shown in the
22 records of the association if different, and shall include:



- 1 (1) The name and address of the foreclosing association;
- 2 (2) The name and last known address of the owner;
- 3 (3) The address of the unit or a description of the
- 4 location of the unit, together with the tax map key
- 5 number of the parcel where the unit is located;
- 6 (4) A statement of the amount claimed to be due to the
- 7 association, including an estimate of the attorney's
- 8 fees, costs, and other expenses related to the
- 9 default, together with a ledger supporting the
- 10 association's claim;
- 11 (5) The date by which the default must be cured, which
- 12 deadline date shall be thirty-five days after the
- 13 notice of intention to foreclose by power of sale is
- 14 mailed to the owner by first class mail and by
- 15 certified mail, return receipt requested, at the
- 16 address of the unit and to the owner's mailing address
- 17 as shown in the records of the association if
- 18 different;
- 19 (6) A statement that the association intends to conduct a
- 20 power of sale foreclosure to sell the unit at a public
- 21 sale without any court action to the highest bidder if
- 22 the default is not cured by the stated deadline;



- 1 (7) The name, address, electronic address, and telephone
2 number of the attorney representing the association,
3 who shall be licensed to practice law in the State and
4 physically located in the State;
- 5 (8) A statement that, under Hawaii law, a unit owner has
6 no right to withhold assessments for any reason;
- 7 (9) A statement that the association's proposed power of
8 sale foreclosure shall be stayed if the owner delivers
9 an amount equal to ten per cent of the total amount
10 claimed to be due to the association, including
11 estimated attorney's fees, costs, and other expenses,
12 to the attorney representing the association, by the
13 deadline date stated in the notice and, by the tenth
14 day of each month thereafter, pays the full amount of
15 any common expense assessment due that month plus at
16 least ten per cent of the amount specified pursuant to
17 subsection (a)(4) until the full amount claimed by the
18 association at the time of the final payment is paid
19 in full; and
- 20 (10) A statement that the owner should consult an attorney
21 licensed in the State for an explanation of the



1 owner's legal rights and possible defenses to the
2 foreclosure.

3 The association's notice of its intention to foreclose by power
4 of sale shall be printed in not less than fourteen-point font.

5 (b) The association shall cause a responsible
6 disinterested person or persons to make three separate attempts
7 to personally deliver the notice to owner of intention to
8 foreclose by power of sale to the owner, or to some other person
9 of suitable age and discretion, at the unit. After three
10 separate attempts on three different days, if the notice has not
11 been delivered to the owner, or to some other person of suitable
12 age and discretion, at the unit, the association shall post the
13 notice conspicuously on the unit.

14 **§667-E Recordation of notice to owner of intention to**
15 **foreclose by power of sale.** The association may record a form
16 of the notice to owner of intention to foreclose by power of
17 sale in a manner similar to, and with the same effect as, the
18 recordation of a notice of pendency of action under section 501-
19 151 or 634-51, or both.

20 **§667-F Stay of power of sale foreclosure by performance of**
21 **payment plan.** (a) The association's proposed power of sale
22 foreclosure shall be stayed if the owner delivers an amount



1 equal to ten per cent of the total amount claimed to be due to
2 the association, including estimated attorney's fees, costs, and
3 other expenses, to the attorney representing the association, by
4 the deadline date stated in the notice to owner of intention to
5 foreclose by power of sale and, by the tenth day of each month
6 thereafter pays the full amount of any common expense assessment
7 due that month plus at least ten per cent of the amount
8 specified pursuant to section 667-D(a)(4) until the full amount
9 claimed by the association at the time of the final payment is
10 paid in full. Any such stay shall be automatically and
11 immediately terminated if the owner fails to make any required
12 payment.

13 (b) The owner shall have the burden of proving that
14 payment was made as required in subsection (a).

15 (c) The owner shall be entitled to a receipt for any
16 payment made pursuant to this section upon request.

17 **§667-G Public notice of public sale; contents;**

18 **distribution.** (a) The association shall prepare the notice of
19 the public sale. The public notice shall state:

20 (1) The date, time, and place of the public sale;



- 1 (2) The address of the unit or a description of the
- 2 location of the unit, together with the tax map key
- 3 number of the parcel where the unit is located;
- 4 (3) The name of the unit owner;
- 5 (4) The name of the association;
- 6 (5) The name, address in the State, and telephone number
- 7 in the State of the person located in the State who
- 8 will be responsible for conducting the public sale;
- 9 (6) The terms and conditions of the public sale;
- 10 (7) An estimate of the opening bid; and
- 11 (8) That the unit will be sold subject to liens with
- 12 priority over the association's lien.

13 The public notice of public sale may also include other
14 information concerning the terms and conditions of sale.

15 (b) The association may distribute the public notice of
16 public sale at any time after the deadline stated in the notice
17 to owner of intention to foreclose by power of sale, unless the
18 owner has paid the full amount claimed to be due to the
19 association by the deadline stated in the notice to owner of
20 intention to foreclose by power of sale. Distribution of the
21 public notice of the public sale shall be stayed, however, upon
22 commencement of the performance of a payment plan in accordance



1 with section 667-F and the stay shall remain in effect unless
2 terminated.

3 (c) The association shall have the public notice of the
4 public sale of the unit sent by first class mail and by
5 certified mail, return receipt requested, to:

6 (1) The owner at the address of the unit and to the
7 owner's mailing address as shown in the records of the
8 association if different;

9 (2) All creditors having a recorded lien on the unit as of
10 the mailing date;

11 (3) The director of taxation;

12 (4) The director of finance of the county where the unit
13 is located; and

14 (5) To any other person entitled to receive notice under
15 section 667-5.5;

16 not less than twenty-one days prior to the date of the public
17 sale.

18 (d) The association shall post the public notice of public
19 sale conspicuously on, or in immediate proximity to, the unit
20 not less than twenty-one days prior to the date of the public
21 sale.



1 (e) The association shall publish the public notice of
2 public sale once in each of three successive weeks, constituting
3 three publications, with the last publication to be not less
4 than fourteen days before the date of the public sale, in a
5 daily newspaper of general circulation in the real property tax
6 zone in which the unit is located, as shown on the applicable
7 county real property tax assessment division, except for the
8 county of Kalawao, which shall be considered its own real
9 property tax zone for the purpose of this subsection.

10 **§667-H Place and time of public sale.** (a) The public
11 sale of the unit shall be held on property under the
12 administration of the State provided that the public sale of a
13 unit located:

- 14 (1) In the city and county of Honolulu shall be held at
15 the state capitol;
- 16 (2) In the districts of Hamakua, North Hilo, South Hilo,
17 or Puna shall be held at a state facility in Hilo;
- 18 (3) In the districts of North Kohala, South Kohala, North
19 Kona, South Kona, or Kau shall be held at a state
20 facility in Kailua-Kona;
- 21 (4) In the county of Maui shall be held at a state
22 facility in the county seat; and



1 (5) In the county of Kauai shall be held at a state
2 facility in the county seat.

3 (b) No public sale shall be held on grounds or at
4 facilities under the administration of the judiciary. The
5 department of accounting and general services may designate one
6 or more state facilities in each county other than the city and
7 county of Honolulu as the location for public sales in those
8 counties.

9 (c) The public sale of the unit shall be conducted by the
10 association on the date, at the time, and at the place described
11 in the public notice of the public sale.

12 **§667-I Postponement, cancellation of public sale.** (a)
13 The association may postpone the public sale up to three times
14 following the initially scheduled public sale date. Thereafter,
15 the association may only proceed under this part if it again
16 complies with all of the public notice and public sale
17 requirements of this part.

18 (b) Any postponement or cancellation of the public sale
19 shall be publicly announced at the date, time, and place of the
20 scheduled public sale. Notice of cancellation shall also be
21 mailed to the persons identified in section 667-G(c).



1 (c) A new public notice of public sale shall be
2 distributed if the public sale is postponed. The new public
3 notice shall state that it is a notice of a postponed sale. The
4 date of the postponed public sale shall be no earlier than
5 fourteen days after the new notice of public sale is:

6 (1) Published in accordance with the requirements
7 contained in section 667-G(e), except that a single
8 publication shall be required;

9 (2) Posted conspicuously on, or in immediate proximity to,
10 the unit; and

11 (3) Mailed to the parties and in the manner prescribed in
12 section 667-G(c).

13 **§667-J Authorized bidders; successful bidder.** (a) The
14 association and all other persons shall be authorized to bid for
15 and to purchase the unit at the public sale. The association
16 shall be authorized to credit bid up to the amount of its claim,
17 including attorney's fees, costs, and other expenses.

18 (b) All bidders present at the public sale shall be
19 required, prior to the public sale, to display good funds in an
20 amount equal to at least ten per cent of the bidder's highest
21 bid, in confidence, to the person conducting the sale on behalf
22 of the association.



1 (c) The highest bidder who meets the terms and conditions
2 of the public sale shall be the successful bidder. The public
3 sale shall be deemed to have been held once the person
4 conducting the public sale announces the successful bidder at
5 the public sale.

6 (d) The successful bidder shall have the duty to complete
7 the purchase, including by making payment in full of the highest
8 bid price and all closing costs. The association shall have a
9 claim against the successful bidder for the full amount of its
10 claim, including attorney's fees, costs, and other expenses,
11 plus provable damages, if the successful bidder does not
12 complete the purchase within forty-five days after the person
13 conducting the sale on behalf of the association declares the
14 highest bidder to be the successful bidder. The association may
15 keep the highest bidder's downpayment in partial satisfaction of
16 its claim.

17 (e) If the successful bidder breaches the duty to timely
18 complete the purchase of the unit, the association may deem
19 itself the successful bidder. If the association exercises that
20 option, it shall be deemed to have bid the same amount as the
21 highest bid made at the public sale. Alternatively, the
22 association may allow any other person who is ready, willing,



1 and able to timely complete the purchase, including by making
2 payment in full of the highest bid price and all closing costs,
3 to do so and thereby become the successful bidder.

4 **§667-K Conveyance upon payment of purchase price;**

5 **distribution of sales proceeds.** (a) The association may
6 execute a conveyance document, as grantor, and also as grantee
7 if it is the successful bidder. The conveyance document shall
8 be in a recordable form that shall be promptly delivered to the
9 successful bidder upon timely completion of the purchase.

10 (b) The proceeds of the sale shall be applied first to the
11 costs of the public sale, then to the association's attorney's
12 fees and costs, and then to the claim of the association. The
13 balance of the public sale proceeds, if any, shall next be
14 distributed to junior lienors holding valid claims on the unit
15 in the order of their priority and not pro rata. Any balance
16 remaining thereafter shall be paid to the owner.

17 (c) The conveyance provided for in this section shall be
18 subject to any lien for real property taxes lawfully imposed by
19 governmental authority against the unit.

20 (d) The conveyance provided for in this part shall be
21 subject to the valid lien of any mortgagee whose mortgage was
22 recorded prior to the recordation of a notice of a lien, or



1 recordation of the notice to owner of intention to foreclose by
2 power of sale, by an association governed by chapter 514B; and
3 in the case of an association governed by chapter 421J, the
4 conveyance provided for in this part shall be subject only to
5 the valid lien of any mortgagee whose mortgage is given priority
6 in the association documents.

7 **§667-L Affidavit after public sale; contents.** (a) A
8 representative of the association shall sign an affidavit, under
9 penalty of perjury, and to the best of that person's knowledge,
10 information, and belief:

11 (1) Stating that the power of sale foreclosure was made
12 pursuant to and in compliance with this part; and

13 (2) Summarizing the actions taken on behalf of the
14 association to complete the power of sale foreclosure.

15 The affiant shall attach to the affidavit a copy of the notice
16 to owner of intention to foreclose by power of sale and a copy
17 of the last public notice of the public sale. Copies of other
18 documents relevant to the process may also be attached, at the
19 election of the affiant.

20 (b) The recitals in the affidavit may, but need not, be in
21 substantially the following form:



- 1 (A) Notice of default was given to the owner in
- 2 accordance with section 667-C of the Hawaii
- 3 Revised Statutes ("H.R.S.");
- 4 (B) Notice to owner of the Association's intention to
- 5 foreclose by power of sale was given in
- 6 accordance with H.R.S., section 667-D. A copy of
- 7 the notice to owner of intention to foreclose by
- 8 power of sale is attached as Exhibit B;
- 9 (C) A copy of the notice to owner of intention to
- 10 foreclose by power of sale was recorded in the
- 11 _____ (bureau of conveyances or office
- 12 of assistant registrar of the land court) as
- 13 document number _____;
- 14 (D) The default was not timely cured;
- 15 (E) Public notice of the public sale was given in
- 16 accordance with H.R.S., section 667-G. A copy of
- 17 the last public notice of public sale is attached
- 18 as Exhibit C; and
- 19 (F) A copy of the affidavit of publication is
- 20 attached as Exhibit D.
- 21 (7) The default was not cured at the time the public sale
- 22 was held; and



1 (8) This affidavit is signed under penalty of perjury."

2 §667-M Recordation of affidavit and conveyance document;

3 effect. (a) The affidavit required under section 667-L and the

4 conveyance document provided for under section 667-K shall both

5 be recorded within forty-five days after the public sale is

6 held. The affidavit and the conveyance document may be recorded

7 on different days. The power of sale foreclosure shall be

8 deemed to have failed unless the affidavit and the conveyance

9 document are both recorded within the forty-five day period.

10 The failure of the power of sale foreclosure shall be without

11 prejudice to the association's opportunity to repeat the process

12 prescribed in this part or to exercise other remedies.

13 (b) The forty-five day period prescribed in subsection (a)

14 shall be extended for an additional thirty days if the initial

15 successful bidder breaches the duty to timely complete the

16 purchase of the unit.

17 (c) When both the affidavit and the conveyance document

18 have been timely recorded:

19 (1) The public sale of the unit shall be complete;

20 (2) The owner and all other persons claiming by, through,

21 or under the owner shall be forever barred of and from

22 any right, title, interest, and claims at law or in



1 equity in and to the unit, including all personalty
2 therein, except as provided in section 667-K(c) and
3 (d);

4 (3) The association's lien on the unit, together with all
5 liens junior in priority to the association's lien,
6 shall be automatically extinguished; provided that the
7 unit shall remain subject to the association documents
8 and to applicable statutes, including with respect to
9 common expense obligations of persons other than the
10 foreclosed owner that arise after the affidavit and
11 the conveyance document are recorded; and

12 (4) The grantee named in the conveyance document shall be
13 entitled to immediate and exclusive possession of the
14 unit and may enter and secure the unit at any time.

15 (d) Any person who takes or remains in possession of the
16 unit after the affidavit and the conveyance document have been
17 timely recorded, including the foreclosed owner and any person
18 who claims by, through, or under the foreclosed owner, shall be
19 considered to hold the status of a tenant at sufferance, a
20 trespasser, or a person otherwise without right to possession of
21 the unit.



1 (e) The grantee named in the conveyance document may bring
2 an action in the nature of summary possession under chapter 666,
3 ejectment, or trespass, or may bring any other appropriate
4 action in a court with jurisdiction and where venue is proper to
5 obtain a writ of possession, a writ of assistance, or any other
6 relief. In any such action, the court shall award the
7 prevailing party its reasonable attorney's fees and costs,
8 together with all other reasonable fees and costs. Recordation
9 of the affidavit and the conveyance document shall be prima
10 facie proof of the grantee's entitlement to summary relief.

11 **§667-N Owner's liability for deficiency.** (a) The owner
12 whose interest in the unit has been foreclosed by the power of
13 sale remedy contained in this part shall remain liable to the
14 association for the full amount of the association's remaining
15 claim, subject to any applicable defenses.

16 (b) Notwithstanding subsection (a), the association shall
17 credit the account of the foreclosed owner with any amounts
18 received pursuant to section 514B-146(g) and (h) or 421J- (g)
19 and (h) following a mortgagee's foreclosure of the unit and
20 subsequent conveyance of the unit to a person other than the
21 mortgagee.



1 (c) The claims of creditors other than the association
2 shall be unaffected by proceedings under this part, except as
3 may be specifically provided in this part.

4 §667-O Liberal construction to facilitate exercise of
5 power of sale remedy. This part shall be liberally construed to
6 facilitate the exercise of the power of sale remedy; provided
7 that substantial compliance with all of the terms and provisions
8 of this part shall be required at all times.

9 §667-P Other remedies; conflict with other provisions.

10 The remedy provided for in this part is in addition to all other
11 remedies available to an association. Insofar as the provisions
12 of this part are inconsistent with other provisions of this
13 chapter or with chapters 421J and 514B, this part shall control
14 with respect to the nonjudicial foreclosure power of sale remedy
15 available to associations."

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

19 "§421J- Association fiscal matters; lien for
20 assessments. (a) The unpaid share of common expenses assessed
21 by an association and chargeable to a unit shall constitute a



1 lien on the unit. The association's lien shall arise as a
2 matter of law and have priority over all other liens, except:

3 (1) Liens for real property taxes and assessments lawfully
4 imposed by governmental authority against the unit;
5 and

6 (2) Liens given priority in the association documents.

7 (b) The lien of the association may be foreclosed in any
8 manner allowed by law or in equity, including by action or by
9 nonjudicial or power of sale foreclosure procedures set forth in
10 this chapter.

11 (c) The association shall be entitled to the appointment
12 of a receiver during the pendency of any foreclosure procedure
13 to preserve the equities of the parties.

14 (d) The association shall be allowed to bid on the unit at
15 any foreclosure sale. The association may acquire, hold, lease,
16 mortgage, convey, or otherwise deal with any unit obtained by
17 the association in connection with a foreclosure sale.

18 (e) The association may file and maintain an action to
19 recover a money judgment for the unpaid share of common expenses
20 assessed by an association and chargeable to a unit without
21 foreclosing or waiving the lien provided for in this section.



1 (f) The purchaser of a unit at a foreclosure sale shall
2 not be liable for the unpaid share of common expenses assessed
3 by an association and chargeable to a unit that became due prior
4 to the time that the purchaser acquired title to the unit,
5 except that:

6 (1) The unpaid common expenses shall be collectible from
7 all of the unit owners, including the purchaser of the
8 foreclosed unit, in proportion to the percentage of
9 common interest appurtenant to the unit; and

10 (2) The purchaser who acquires title from a foreclosing
11 mortgagee, but not the foreclosing mortgagee itself,
12 shall be liable for the special assessment provided
13 for in subsections (g) and (h).

14 (g) The purchaser of a unit who acquires title following
15 the foreclosure of a mortgage lien, but not the foreclosing
16 mortgagee itself, shall be liable to the association for the
17 common expenses left unpaid by the owner whose interests have
18 been foreclosed, subject to subsection (h).

19 (h) The amount provided for in subsection (g) shall be
20 limited to regular periodic common expenses that are imposed on
21 all units as part of a budget adopted pursuant to the
22 association documents and shall exclude all other amounts. That



1 amount shall not exceed \$ and shall exclude late
2 charges, fines, penalties, interest, attorney's fees, costs, or
3 any other amount related to the collection of any delinquency or
4 the enforcement of any lien.

5 (i) Title shall be deemed to have passed to any purchaser
6 following the foreclosure of any mortgage or association lien,
7 and the obligation to pay common expenses shall begin, upon the
8 earliest of the following:

9 (1) Recordation of the conveyance document;

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

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

14 (4) When the affidavit has been recorded in a nonjudicial
15 power of sale foreclosure pursuant to section 667-5;

16 or

17 (5) When both the affidavit and conveyance document have
18 been recorded in a nonjudicial power of sale
19 foreclosure pursuant to part of chapter 667;

20 provided that, with respect to judicial foreclosures, title
21 shall be deemed to have passed, and the obligation to pay common
22 expenses shall begin, upon recordation of the conveyance



1 document or some earlier time determined by a court of competent
2 jurisdiction if post-confirmation legal proceedings, or
3 bankruptcy, delay entry of the order confirming sale.

4 (j) The association may terminate a delinquent owner-
5 occupant's access to the common elements and may cease supplying
6 any services normally supplied or paid for by the association to
7 the owner-occupant if the board first adopts a policy providing
8 for such actions and a majority of the unit owners approve the
9 policy by vote or written consent. Such actions shall be taken
10 only after sixty-days written notice to the owner-occupant and
11 shall be without prejudice to the exercise of any other
12 remedies. Terminated access and services shall be restored upon
13 the association's receipt of payment in full.

14 (k) No unit owner shall withhold payment of any assessment
15 claimed by the association for any reason.

16 (l) 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 periodic 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; and



1 (3) The amount of any attorney's fees and costs included
2 in the assessment.

3 Nothing in this section shall limit the rights of an owner to
4 the protection of all fair debt collection procedures mandated
5 under federal or state law.

6 (m) A unit owner who pays an association the full amount
7 claimed by the association shall be entitled to file in small
8 claims court or require the association to mediate any dispute
9 concerning the amount or validity of the paid assessment. After
10 mediation, the owner or the association may require arbitration
11 of any remaining dispute concerning the paid assessment in like
12 manner as set forth in sections 514B-162 and 514B-163. Any such
13 arbitration proceedings initiated by an owner shall be suspended
14 in the event that the owner fails to keep all association
15 assessments current during the arbitration. The arbitration
16 proceedings may be resumed thereafter if the owner pays all
17 assessments claimed by the association within thirty days after
18 the arbitrator suspends the proceedings. The arbitration
19 proceedings shall be dismissed if the owner fails to make
20 payment in full within thirty days after suspension of the
21 arbitration proceedings. The unit owner shall be entitled to a
22 refund of any amounts paid to the association that are not owed.



1 (n) The cost of a release of any lien filed pursuant to
2 this section shall be paid by the party requesting the release."

3 SECTION 4. Section 514B-146, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§514B-146 Association fiscal matters; lien for**
6 **assessments.** (a) [~~All sums assessed by the association but~~
7 ~~unpaid for the share of the common expenses chargeable to any~~
8 ~~unit shall constitute a lien on the unit with priority over all~~
9 ~~other liens, except:~~

10 ~~(1) Liens for taxes and assessments lawfully imposed by~~
11 ~~governmental authority against the unit; and~~

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

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

20 ~~In any such foreclosure, the unit owner shall be required to pay~~
21 ~~a reasonable rental for the unit, if so provided in the bylaws,~~
22 ~~and the plaintiff in the foreclosure shall be entitled to the~~



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

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



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

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

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

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



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

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

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

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

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

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

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

20 ~~(6) That payment in full of the assessment does not~~
21 ~~prevent the owner from contesting the assessment or~~
22 ~~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 The unpaid share of common expenses assessed by an association
6 and chargeable to a unit shall constitute a lien on the unit.

7 The association's lien shall arise as a matter of law and have
8 priority over all other liens, except:

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

11 and

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

16 (b) The lien of the association may be foreclosed in any
17 manner allowed by law or in equity, including by action or by
18 nonjudicial or power of sale foreclosure procedures set forth in
19 chapter 667.

20 (c) The association shall be entitled to the appointment
21 of a receiver during the pendency of any foreclosure procedure
22 to preserve the equities of the parties.



1 (d) The association shall be allowed to bid on the unit at
2 any foreclosure sale. The association may acquire, hold, lease,
3 mortgage, convey, and otherwise deal with any unit obtained by
4 the association in connection with a foreclosure sale.

5 (e) The association may file and maintain an action to
6 recover a money judgment for the unpaid share of common expenses
7 assessed by an association and chargeable to a unit without
8 foreclosing or waiving the lien provided for in this section.

9 (f) The purchaser of a unit at a foreclosure sale shall
10 not be liable for the unpaid share of common expenses assessed
11 by an association and chargeable to a unit that became due prior
12 to the time that the purchaser acquired title to the unit,
13 except that:

14 (1) Such unpaid common expenses shall be collectible from
15 all of the unit owners, including the purchaser of the
16 foreclosed unit, in proportion to the percentage of
17 common interest appurtenant to the unit; and

18 (2) The purchaser who acquires title from a foreclosing
19 mortgagee, but not the foreclosing mortgagee itself,
20 shall be liable for the special assessment provided
21 for in subsections (g) and (h).



1 (g) The purchaser of a unit who acquires title following
2 the foreclosure of a mortgage lien, but not the foreclosing
3 mortgagee itself, shall be liable to the association for the
4 common expenses left unpaid by the owner whose interests have
5 been foreclosed, subject to subsection (h);

6 (h) The amount provided for in subsection (g) shall be
7 limited to regular periodic common expenses that are imposed on
8 all units as part of a budget adopted pursuant to section 514B-
9 148 and shall exclude all other amounts. That amount shall not
10 exceed \$ _____ and shall not include late charges, fines,
11 penalties, interest, attorney's fees, costs, or any other amount
12 related to the collection of any delinquency or the enforcement
13 of any lien.

14 (i) Title shall be deemed to have passed to any purchaser
15 following the foreclosure of any mortgage or association lien,
16 and the obligation to pay common expenses shall begin, upon the
17 earliest of the following:

- 18 (1) Recordation of the conveyance document;
- 19 (2) Sixty days after the hearing at which the court grants
20 the motion to confirm the sale to the purchaser;
- 21 (3) Thirty-five days after the order confirming the sale
22 to the purchaser has been filed with the court; or



1 (4) When both the affidavit and conveyance document have
2 been recorded in a nonjudicial power of sale
3 foreclosure pursuant to part of chapter 667;
4 provided that, with respect to judicial foreclosures, title
5 shall be deemed to have passed, and the obligation to pay common
6 expenses shall begin, upon recordation of the conveyance
7 document or some earlier time determined by a court of competent
8 jurisdiction if post-confirmation legal proceedings, or
9 bankruptcy, delay entry of the order confirming sale.

10 (j) The association may terminate a delinquent owner-
11 occupant's access to the common elements and may cease supplying
12 any and all services normally supplied or paid for by the
13 association to that owner-occupant if the board first adopts a
14 policy providing for such actions and a majority of the unit
15 owners approve the policy by vote or written consent. Such
16 actions shall be taken only after sixty days written notice to
17 the owner-occupant and shall be without prejudice to the
18 exercise of any other remedies. Terminated access and services
19 shall be restored upon the association's receipt of payment in
20 full.

21 (k) No unit owner shall withhold payment of any assessment
22 claimed by the association for any reason.



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

3 (1) The amount of regular periodic common assessments or
4 special assessments included in the assessment,
5 including the due date of each amount claimed;

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

8 (3) The amount of any attorney's fees and costs included
9 in the assessment.

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

13 (m) A unit owner who pays an association the full amount
14 claimed by the association shall be entitled to file in small
15 claims court or require the association to mediate any dispute
16 concerning the amount or validity of the paid assessment. After
17 mediation, the owner or the association may require arbitration
18 of any remaining dispute concerning the paid assessment. Any
19 such arbitration proceedings initiated by an owner shall be
20 suspended in the event that the owner fails to keep all
21 association assessments current during the arbitration. The
22 arbitration proceedings may be resumed thereafter if the owner



1 pays all assessments claimed by the association within thirty
 2 days after the arbitrator suspends the proceedings. The
 3 arbitration proceedings shall be dismissed if the owner fails to
 4 make payment in full within thirty days after suspension of the
 5 arbitration proceedings. The unit owner shall be entitled to a
 6 refund of any amounts paid to the association that are not owed.

7 (n) The cost of a release of any lien filed pursuant to
 8 this section shall be paid by the party requesting the release."

9 SECTION 5. Section 603-21.7, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "**§603-21.7 Nonjury cases.** The several circuit courts
 12 shall have jurisdiction, without the intervention of a jury
 13 except as provided by statute, as follows:

14 [~~a~~] (1) Of actions or proceedings:

15 [~~1~~] (A) For the determination and declaration of heirs of
 16 deceased persons, which jurisdiction shall be in
 17 addition to the probate jurisdiction of the
 18 court;

19 [~~2~~] (B) For the admeasurement of dower and curtesy, or
 20 the partition of real estate; and

21 [~~3~~] (C) For enforcing and regulating the execution of
 22 trusts, whether the trusts relate to real or



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

12 [~~(b)~~] (2) Of actions or proceedings in or in the nature of
 13 habeas corpus, prohibition, mandamus, quo warranto,
 14 and all other proceedings in or in the nature of
 15 applications for writs directed to courts of inferior
 16 jurisdiction, to corporations and individuals, as may
 17 be necessary to the furtherance of justice and the
 18 regular execution of the law."

19 SECTION 6. Act 48, Session Laws of Hawaii 2011, is amended
 20 by amending section 45 to read as follows:

21 "SECTION 45. This Act shall take effect upon its approval;
 22 provided that:



- 1 (1) The mortgage foreclosure dispute resolution program
2 established by section 1 of this Act shall be
3 operative no later than October 1, 2011;
- 4 (2) Sections 1[~~7~~] and 13[~~7~~,~~and~~~~14~~] shall be repealed on
5 September 30, 2014, and [~~sections~~] section 514A-90(h)
6 [~~and 514B-146(h)~~], Hawaii Revised Statutes, shall be
7 reenacted in the form in which [~~they~~] it read on the
8 day before the effective date of this Act;
- 9 (3) Section 10 shall take effect on July 1, 2012;
- 10 (4) Section 5 shall be repealed on December 31, 2012;
- 11 (5) Section 7 shall be repealed on September 30, 2014, and
12 section 26-9(o), Hawaii Revised Statutes, shall be
13 reenacted in the form in which it read on the day
14 before the effective date of this Act; and
- 15 (6) Upon the repeal of section 1, all moneys remaining in
16 the mortgage foreclosure dispute resolution special
17 fund established under section 667-P, Hawaii Revised
18 Statutes, shall be transferred to the compliance
19 resolution fund established under section 26-9(o),
20 Hawaii Revised Statutes."

21 SECTION 7. In codifying the new sections added by section
22 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

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

5 SECTION 9. This Act shall take effect upon its approval.

6

INTRODUCED BY: Rosalyn H. Behr
By Request



S.B. NO. 2657

Report Title:

Condominiums and Planned Community Associations; Liens for Unpaid Assessments; Collection and Foreclosure Remedies

Description:

Establishes an alternate power of sale process for condominium and planned community associations. Revises provisions on condominium liens for unpaid assessments and establishes similar provisions for planned community associations. Specifies the jurisdiction of the circuit courts over actions to foreclose association liens.

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

