
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514B-146, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§514B-146 Association fiscal matters; lien for**
4 **assessments.** (a) All sums assessed by the association but
5 unpaid for the share of the common expenses chargeable to any
6 unit shall constitute a lien on the unit with priority over all
7 other liens, except:
8 (1) Liens for taxes and assessments lawfully imposed by
9 governmental authority against the unit; and
10 (2) [All] Except as provided in subsection (g), all sums
11 unpaid on any mortgage of record that was recorded
12 prior to the recordation of a notice of a lien by the
13 association, and costs and expenses including
14 attorneys' fees provided in such mortgages;
15 provided that a lien recorded by an association for unpaid
16 assessments shall expire six years from the date of recordation
17 unless proceedings to enforce the lien are instituted prior to
18 the expiration of the lien; provided further that the expiration



1 of a recorded lien shall in no way affect the association's
2 automatic lien that arises pursuant to this subsection or the
3 declaration or bylaws. Any proceedings to enforce an
4 association's lien for any assessment shall be instituted within
5 six years after the assessment became due; provided that if the
6 owner of a unit subject to a lien of the association files a
7 petition for relief under the United States Bankruptcy Code (11
8 U.S.C. §101 et seq.), the period of time for instituting
9 proceedings to enforce the association's lien shall be tolled
10 until thirty days after the automatic stay of proceedings under
11 section 362 of the United States Bankruptcy Code (11 U.S.C.
12 §362) is lifted.

13 The lien of the association may be foreclosed by action or
14 by nonjudicial or power of sale foreclosure procedures set forth
15 in chapter 667, by the managing agent or board, acting on behalf
16 of the association and in the name of the association; provided
17 that no association may exercise the nonjudicial or power of
18 sale remedies provided in chapter 667 to foreclose a lien
19 against any unit that arises solely from fines, penalties, legal
20 fees, or late fees, and the foreclosure of any such lien shall
21 be filed in court pursuant to part IA of chapter 667.



1 In any such foreclosure, the unit owner shall be required
2 to pay a reasonable rental for the unit, if so provided in the
3 bylaws or the law, and the plaintiff in the foreclosure shall be
4 entitled to the appointment of a receiver to collect the rental
5 owed by the unit owner or any tenant of the unit. If the
6 association is the plaintiff, it may request that its managing
7 agent be appointed as receiver to collect the rent from the
8 tenant. The managing agent or board, acting on behalf of the
9 association and in the name of the association, unless
10 prohibited by the declaration, may bid on the unit at
11 foreclosure sale, and acquire and hold, lease, mortgage, and
12 convey the unit. Action to recover a money judgment for unpaid
13 common expenses shall be maintainable without foreclosing or
14 waiving the lien securing the unpaid common expenses owed.

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



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

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

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

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

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



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

8 (c) No unit owner shall withhold any assessment claimed by
9 the association. A unit owner who disputes the amount of an
10 assessment may request a written statement clearly 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, a unit owner has no right to
19 withhold assessments for any reason;
- 20 (5) That a unit owner has a right to demand mediation or
21 arbitration to resolve disputes about the amount or
22 validity of an association's assessment, provided the



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



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

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

19 (f) Before the board or managing agent may take the
20 actions permitted under subsection (e), the board shall adopt a
21 written policy providing for such 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 (g) Subject to this subsection, and subsections (h) and
4 (i), the board may specially assess the amount of the unpaid
5 regular monthly common assessments for common expenses against a
6 ~~[person]~~ mortgagee who, in a judicial or nonjudicial power of
7 sale foreclosure, purchases a delinquent unit; provided 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 further that] the
22 mortgagee or [subsequent] other purchaser may require~~



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

9 (h) The amount of the special assessment assessed under
10 subsection (g) shall not exceed the total amount of unpaid
11 regular monthly common assessments that were assessed during the
12 six months immediately preceding the completion of the judicial
13 or nonjudicial power of sale foreclosure.

14 (i) For purposes of subsections (g) and (h), 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 after public sale is recorded pursuant to
19 section 667-33; and

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

22 "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 (k) After any judicial or non-judicial foreclosure
13 proceeding in which the association acquires title to the unit,
14 any excess rental income received by the association from the
15 unit shall be paid to existing lien holders based on the
16 priority of lien, and not on a pro rata basis, and shall be
17 applied to the benefit of the unit owner. For purposes of this
18 subsection, excess rental income shall be any net income
19 received by the association after a court has issued a final
20 judgment determining the priority of a senior mortgagee and
21 after paying, crediting, or reimbursing the association or a
22 third party for:

- 1 (1) The lien for delinquent assessments pursuant to
- 2 subsections (a) and (b);
- 3 (2) Any maintenance fee delinquency against the unit;
- 4 (3) Attorney's fees and other collection costs related to
- 5 the association's foreclosure of the unit; or
- 6 (4) Any costs incurred by the association for the rental,
- 7 repair, maintenance, or rehabilitation of the unit
- 8 while the association is in possession of the unit
- 9 including monthly association maintenance fees,
- 10 management fees, real estate commissions, cleaning and
- 11 repair expenses for the unit, and general excise taxes
- 12 paid on rental income;
- 13 provided that the lien for delinquent assessments under
- 14 paragraph (1) shall be paid, credited, or reimbursed first."

15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.

Report Title:

Condominiums; Condominium Associations; Common Assessments;
Liens

Description:

Permits the board of directors of a condominium association to collect a six-month special assessment from the mortgagee or other purchaser of a unit with a recorded lien for delinquent common assessments. Specifies how excess rental income received by a condominium association shall be paid to existing lien holders. (CD1)

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

