
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]~~ liens for taxes and assessments lawfully
9 imposed by governmental authority against the unit[+]
10 and

11 ~~(2) All sums unpaid on any mortgage of record that was~~
12 ~~recorded prior to the recordation of a notice of a~~
13 ~~lien by the association, and costs and expenses~~
14 ~~including attorneys' fees provided in such mortgages,~~
15 ~~provided that a].~~ 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~~] 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 personally liable for the share of the
20 common expenses or assessments by the association chargeable to
21 the unit that became due prior to the acquisition of title to
22 the unit by the acquirer[~~. The unpaid share of common expenses~~



1 ~~or 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.];~~ provided that the lien for
4 the share of the common expenses or assessments by the
5 association, chargeable to the unit that became due prior to the
6 transfer of title to the acquirer, shall be and shall remain
7 enforceable, and may be foreclosed by action or by the
8 nonjudicial or power of sale foreclosure remedies set forth in
9 chapter 667, against the acquirer and the acquirer's successors
10 and assigns. The mortgagee of record or other purchaser of the
11 unit shall be deemed to acquire title and shall be required to
12 pay the unit's share of common expenses and assessments
13 beginning:

- 14 (1) Thirty-six days after the order confirming the sale to
15 the purchaser has been filed with the court;
- 16 (2) Sixty days after the hearing at which the court grants
17 the motion to confirm the sale to the purchaser;
- 18 (3) Thirty days after the public sale in a nonjudicial
19 power of sale foreclosure conducted pursuant to
20 chapter 667; or
- 21 (4) Upon the recording of the instrument of conveyance;



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

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

19 (1) The amount of common expenses included in the
20 assessment, including the due date of each amount
21 claimed;



- 1 (2) The amount of any penalty, late fee, lien filing fee,
2 and any other charge included in the assessment;
- 3 (3) The amount of attorneys' fees and costs, if any,
4 included in the assessment;
- 5 (4) That under Hawaii law, a unit owner has no right to
6 withhold assessments for any reason;
- 7 (5) That a unit owner has a right to demand mediation or
8 arbitration to resolve disputes about the amount or
9 validity of an association's assessment, provided the
10 unit owner immediately pays the assessment in full and
11 keeps assessments current; and
- 12 (6) That payment in full of the assessment does not
13 prevent the owner from contesting the assessment or
14 receiving a refund of amounts not owed.

15 Nothing in this section shall limit the rights of an owner to
16 the protection of all fair debt collection procedures mandated
17 under federal and state law.

18 (d) A unit owner who pays an association the full amount
19 claimed by the association may file in small claims court or
20 require the association to mediate to resolve any disputes
21 concerning the amount or validity of the association's claim.

22 If the unit owner and the association are unable to resolve the



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

16 (e) In conjunction with or as an alternative to
17 foreclosure proceedings under subsection (a), where a unit is
18 owner-occupied, the association may authorize its managing agent
19 or board to, after sixty days' written notice to the unit owner
20 and to the unit's first mortgagee of the nonpayment of the
21 unit's share of the common expenses, terminate the delinquent
22 unit's access to the common elements and cease supplying a



1 delinquent unit with any and all services normally supplied or
2 paid for by the association. Any terminated services and
3 privileges shall be restored upon payment of all delinquent
4 assessments but need not be restored until payment in full is
5 received.

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

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

17 ~~(1) A purchaser who holds a mortgage on a delinquent unit~~
18 ~~that was recorded prior to the filing of a notice of~~
19 ~~lien by the association and who acquires the~~
20 ~~delinquent unit through a judicial or nonjudicial~~
21 ~~foreclosure proceeding, including purchasing the~~
22 ~~delinquent unit at a foreclosure auction, shall not be~~



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

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

18 ~~(h) The amount of the special assessment assessed under~~
19 ~~subsection (g) shall not exceed the total amount of unpaid~~
20 ~~regular monthly common assessments that were assessed during the~~
21 ~~six months immediately preceding the completion of the judicial~~
22 ~~or nonjudicial power of sale foreclosure.~~



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

3 ~~"Completion" means:~~

4 ~~(1) In a nonjudicial power of sale foreclosure, when the~~
5 ~~affidavit after public sale is recorded pursuant to~~
6 ~~section 667-33; and~~

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

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

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

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

14 ~~(3) Interest assessed by the association;~~

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

16 ~~(5) Any fees or costs related to the collection or~~
17 ~~enforcement of the assessment, including attorneys'~~
18 ~~fees and court costs.~~

19 ~~(j) The cost of a release of any lien filed pursuant to~~
20 ~~this section shall be paid by the party requesting the release.]~~

21 (g) After any judicial or non-judicial foreclosure
22 proceeding in which the association acquires title to the unit,



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

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



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

3 SECTION 3. This Act shall take effect on July 1, 2112.



Report Title:

Condominiums; Assessments; Liens

Description:

Repeals the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees. Clarifies the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees. Effective July 1, 2112. (HB21 HD1)

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

