



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2014

GOV. MSG. NO. 1345

The Honorable Donna Mercado Kim,
President and Members
of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of
the House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

Re: SB2483 SD1 HD1 CD1

SB2483 SD1 HD1 CD1, entitled "A BILL FOR AN ACT RELATING TO CONDOMINIUM ASSOCIATIONS" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to clarify that a condominium association's lien is subordinate to real property taxes and that the association may assess unpaid common fees against any purchaser who purchases a delinquent unit in a foreclosure. Part II of the bill also clarifies filling of board vacancies.

The Department of Taxation and representatives of condominium associations have agreed to monitor the effect of these amendments on the collection of property taxes. Additionally, the language of the order of collection needs to be reassessed and reviewed by the Legislature.

For the foregoing reasons, SB2483 SD1 HD1 CD1 will become law as ACT 235, Session Laws of Hawaii 2014, effective July 8, 2014, without my signature.

Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Permitted to become law without the

THE SENATE Governor's signature
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

JUL 8 2014

ACT 235
S.B. NO. 2483
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1

PART I

2 SECTION 1. The legislature finds that section 514B-146,
3 Hawaii Revised Statutes, was amended during the regular session
4 of 2013 to address, in part, the timing of the payment to a
5 condominium association of the six-month special assessment for
6 unpaid common expenses pursuant to section 514B-146(g) and (h),
7 Hawaii Revised Statutes. However, the term "other purchaser"
8 was inadvertently left out of the amended statute, and needs to
9 be added back in to section 514B-146(g), Hawaii Revised
10 Statutes, in order to clarify, correct, and mitigate disputes
11 resulting from the absence of this term.

12 The legislature further finds that section 514B-146(a)(1),
13 Hawaii Revised Statutes, provides, in part, that taxes take
14 priority over a condominium association's assessments and
15 related lien for such assessments. However, the term taxes
16 referenced in section 514B-146(a)(1), Hawaii Revised Statutes,
17 may have only been intended to include real property taxes,
18 rather than all taxes owed by the unit owner.



1 The purpose of this part is to make housekeeping amendments
2 to state condominium laws.

3 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) All sums assessed by the association but unpaid for
7 the share of the common expenses chargeable to any unit shall
8 constitute a lien on the unit with priority over all other
9 liens, except:

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

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

18 provided that a lien recorded by an association for unpaid
19 assessments shall expire six years from the date of recordation
20 unless proceedings to enforce the lien are instituted prior to
21 the expiration of the lien; provided further that the expiration
22 of a recorded lien shall in no way affect the association's



1 automatic lien that arises pursuant to this subsection or the
2 declaration or bylaws. Any proceedings to enforce an
3 association's lien for any assessment shall be instituted within
4 six years after the assessment became due; provided that if the
5 owner of a unit subject to a lien of the association files a
6 petition for relief under the United States Bankruptcy Code (11
7 U.S.C. §101 et seq.), the period of time for instituting
8 proceedings to enforce the association's lien shall be tolled
9 until thirty days after the automatic stay of proceedings under
10 section 362 of the United States Bankruptcy Code (11 U.S.C.
11 §362) is lifted.

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

21 In any such foreclosure, the unit owner shall be required
22 to pay a reasonable rental for the unit, if so provided in the



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

13 2. By amending subsection (g) to read:

14 "(g) Subject to this subsection, and subsections (h) and
15 (i), the board may specially assess the amount of the unpaid
16 regular monthly common assessments for common expenses against a
17 mortgagee or other purchaser who, in a judicial or nonjudicial
18 power of sale foreclosure, purchases a delinquent unit; provided
19 that the mortgagee or other purchaser may require the
20 association to provide at no charge a notice of the
21 association's intent to claim lien against the delinquent unit
22 for the amount of the special assessment, prior to the



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

5 **PART II**

6 SECTION 3. Section 514B-106, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The board may not act on behalf of the association to
9 amend the declaration or bylaws (sections 514B-32(a)(11) and
10 514B-108(b)(7)), to remove the condominium from the provisions
11 of this chapter (section 514B-47), or to elect members of the
12 board or determine the qualifications, powers and duties, or
13 terms of office of board members (subsection (e)); provided that
14 nothing in this subsection shall be construed to prohibit board
15 members from voting proxies (section 514B-123) to elect members
16 of the board; and provided further that notwithstanding anything
17 to the contrary in the declaration or bylaws, the board may only
18 fill vacancies in its membership to serve until the next annual
19 or duly noticed special association meeting. Notice of a
20 special association meeting to fill vacancies shall include
21 notice of the election. Any special association meeting to fill
22 vacancies shall be held on a date that allows sufficient time



1 for owners to declare their intention to run for election and to
2 solicit proxies for that purpose."

3 **PART III**

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2014.

APPROVED this day of , 2014

GOVERNOR OF THE STATE OF HAWAII