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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

**PART I**

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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.



**Report Title:**

Condominium Association; Fiscal Matters; Unpaid Common Fees Assessments; Real Property Tax; Board Elections

**Description:**

Clarifies that a condominium association's lien is subordinate to real property taxes, rather than all taxes. Clarifies that a condominium association may assess unpaid common fees against any purchaser who purchases a delinquent unit in a foreclosure. Specifies that a condominium board may only fill board vacancies temporarily until a duly noticed election. (CD1)

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

