



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

**GOV. MSG. NO. 1402**

July 10, 2019

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: SB551 SD1 HD2 CD1

Pursuant to Section 16 of Article III of the State Constitution, SB551 SD1 HD2 CD1, entitled "A BILL FOR AN ACT RELATING TO CONDOMINIUMS" became law as ACT 282 on July 10, 2019.

This bill will allow condominium associations to conduct nonjudicial foreclosures, regardless of whether the association's governing documents include a provision expressly providing such authority. The bill addresses a recent decision of the Intermediate Court of Appeals interpreting legislative intent in *Sakal v. Association of Apartment Owners of Hawaii Monarch*, 143 Haw. 219 (2018). It also requires the foreclosing association to offer mediation along with any notice of default and intention to foreclose, as well as prescribed procedures when mediation is chosen by the consumer.

While we have concerns because the bill expressly states that it will apply retroactively, we recognize the need for foreclosing associations to have clarity after *Sakal*. Thus, despite the retroactive application, the prospective application of the bill has utility and value.

The Honorable Ronald D. Kouchi  
The Honorable Scott K. Saiki  
July 10, 2019  
Page Two

We hope to have continued conversations next session to address the bill's implementation challenges and to help both foreclosing associations and delinquent homeowners in condominiums achieve the intent of this measure.

For the foregoing reasons, I allowed SB551 SD1 HD2 CD1 to become law without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE  
Governor, State of Hawaii

# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The legislature finds that "Hawaii was the  
2 first state to enact statutory provisions enabling the creation  
3 of condominiums." State Savings & Loan Association v. Kauaian  
4 Development Company, 50 Haw. 540, 546, 445 P.2d 109, 115 n.8  
5 (1968). Brought into being by the legislature through Act 180,  
6 Session Laws of Hawaii 1961, condominiums are "creature[s] of  
7 statute," State Savings & Loan Association, 50 Haw. at 546, 445  
8 P.2d at 115, which are governed by *statutes*, as well as their  
9 governing documents.

10           The legislature finds that condominiums provide a valuable  
11 housing resource in Hawaii, especially with limited space  
12 available for new development. The structure of condominium  
13 ownership requires each owner to share in the total cost of  
14 maintaining common areas such as building exteriors,  
15 landscaping, pool, and recreation rooms, in addition to paying  
16 insurance premiums. All owners pay for such maintenance through  
17 fees or dues. The legislature further finds that it is crucial  
18 that condominium associations be able to secure timely payment



1 of dues to provide services to all residents of a condominium  
2 community.

3 In 1999, the legislature noted "that more frequently  
4 associations of apartment owners are having to increase  
5 maintenance fee assessments due to increasing delinquencies and  
6 related enforcement expenses. This places an unfair burden on  
7 those non-delinquent apartment owners who must bear an unfair  
8 share of common expenses . . . ." Moreover, lengthy delays in  
9 the judicial foreclosure process exacerbated the financial  
10 burden on association owners. The legislature determined that  
11 associations needed a more efficient alternative, such as power  
12 of sale foreclosures, to provide a remedy for recurring  
13 delinquencies.

14 Additionally, the legislature finds that condominium  
15 associations, since 1999, have been authorized to conduct  
16 nonjudicial foreclosures regardless of the presence or the  
17 absence of power of sale language in an association's governing  
18 documents. Beginning in 1998 with the passage of Act 122,  
19 Session Laws of Hawaii 1998, and codified in section 667-40,  
20 Hawaii Revised Statutes, condominium associations were  
21 authorized to conduct nonjudicial foreclosures if a "law or



1 written document contains, authorizes, permits, or provides for  
2 a power of sale, a power of sale foreclosure, a power of sale  
3 remedy, or a nonjudicial foreclosure." However, in 1999, the  
4 legislature passed Act 236, Session Laws of Hawaii 1999,  
5 "[c]larify[ing] that associations of apartment owners may  
6 enforce liens for unpaid common expenses by non-judicial power  
7 of sale foreclosure procedures, as an alternative to legal  
8 action" by:

- 9 (1) Specifying that condominium associations may foreclose  
10 liens by nonjudicial or power of sale foreclosure  
11 within the statute governing the priority of a  
12 condominium association lien (section 514A-90, Hawaii  
13 Revised Statutes (repealed January 1, 2019)); and  
14 (2) Incorporating into the bylaws of all condominium  
15 associations a provision authorizing condominium  
16 associations to enforce liens by nonjudicial or power  
17 of sale foreclosure pursuant to chapter 667, Hawaii  
18 Revised Statutes (section 514A-82, Hawaii Revised  
19 Statutes (repealed January 1, 2019)).

20 Thus, Act 236, Session Laws of Hawaii 1999, provided a statutory  
21 grant of power and an incorporation into written documents



1 authorizing condominium associations to utilize nonjudicial  
2 foreclosure under sections 667-5 (repealed June 28, 2012) and  
3 667-40, Hawaii Revised Statutes, to enforce their liens.

4       The legislature also finds that this intent was not  
5 abrogated by the recodification of chapter 514A, Hawaii Revised  
6 Statutes. First, through Act 164, Session Laws of Hawaii 2004,  
7 the language of section 514A-90, Hawaii Revised Statutes, was  
8 incorporated with limited amendments while retaining the  
9 authorization that condominium associations may foreclose liens  
10 by nonjudicial or power of sale foreclosure. Second, while the  
11 new statute governing bylaws no longer contained a provision  
12 authorizing condominium associations to enforce liens by  
13 nonjudicial or power of sale foreclosure, it was not removed out  
14 of an intention to revoke this authority from condominium  
15 associations but rather out of a desire to enhance the clarity  
16 of the condominium law. As stated in the *Final Report to the*  
17 *Legislature: Recodification of Chapter 514A, Hawaii Revised*  
18 *Statutes (Condominium Property Regimes)*, the "statutory  
19 requirements for condominium governing documents should be  
20 minimized while incorporating certain provisions . . . in more  
21 appropriate statutory sections."



1 Further, the legislature finds that the intent was not  
2 abrogated by the creation of the nonjudicial foreclosure process  
3 specifically for condominium associations, codified as part VI  
4 of chapter 667, Hawaii Revised Statutes, through Act 182,  
5 Session Laws of Hawaii 2012. This is evidenced by the lack of a  
6 provision constricting its application similar to the language  
7 in section 667-40, Hawaii Revised Statutes.

8 Since the enactment of part VI of chapter 667, Hawaii  
9 Revised Statutes, associations have conducted nonjudicial  
10 foreclosures as part of their efforts to collect delinquencies  
11 and sustain their financial operations. Associations have done  
12 so subject to the restrictions on nonjudicial foreclosures and  
13 other collection options imposed by the legislature, which  
14 include:

- 15 (1) Prohibiting the use of nonjudicial foreclosure to  
16 collect fines, penalties, legal fees, or late fees;
- 17 (2) Requiring associations to give an owner sixty days to  
18 cure a default before proceeding with the nonjudicial  
19 foreclosure and to accept reasonable payment plans of  
20 up to twelve months; and



1 (3) Requiring associations to provide owners with contact  
2 information for approved housing counselors and  
3 approved budget and credit counselors.

4 However, the intermediate court of appeals in Sakal v.  
5 Association of Apartment Owners of Hawaiian Monarch, 143 Haw.  
6 219, 426 P.3d 443 (2018), held that the legislature intended  
7 that associations can only conduct nonjudicial foreclosures if  
8 they have specific authority to conduct nonjudicial foreclosures  
9 in their declaration or bylaws or in an agreement with the owner  
10 being foreclosed upon.

11 The legislative history indicates this was not the intent  
12 of the legislature in 1999, nor in legislatures that have made  
13 subsequent amendments. Therefore, this Act confirms the  
14 legislative intent that condominium associations should be able  
15 to use nonjudicial foreclosure to collect delinquencies  
16 regardless of the presence or absence of power of sale language  
17 in an association's governing documents.

18 This Act also provides an additional consumer protection by  
19 requiring the foreclosing association to offer mediation with  
20 any notice of default and intention to foreclose and the  
21 procedures when mediation is chosen by the consumer.





1 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§514B- Association fiscal matters; supplemental  
5 nonjudicial foreclosure notices; restrictions on power of sale.  
6 (a) Any notice of default and intention to foreclose given by  
7 an association under section 667-92(a) shall, in addition to the  
8 requirements of that section, also include a statement that the  
9 unit owner may request mediation by delivering a written request  
10 for mediation to the association by certified mail, return  
11 receipt requested, or hand delivery within thirty days after  
12 service of a notice of default and intention to foreclose on the  
13 unit owner.

14 If the association does not receive a request for mediation  
15 within the thirty-day period, the association may proceed with  
16 nonjudicial or power of sale foreclosure, subject to all  
17 applicable provisions of this chapter and chapter 667. If the  
18 association receives a request for mediation, as set forth in  
19 this subsection, from a unit owner within thirty days after  
20 service of a notice of default and intention to foreclose upon  
21 the unit owner, the association shall agree to mediate and shall



1 be prohibited from proceeding with nonjudicial or power of sale  
2 foreclosure until the association has participated in the  
3 mediation or the time period for completion of the mediation has  
4 elapsed. The mediation shall be completed within sixty days of  
5 the date upon which the unit owner delivers a request for  
6 mediation upon the association; provided that if the mediation  
7 is not commenced or completed within sixty days or the parties  
8 are unable to resolve the dispute by mediation, the association  
9 may proceed with nonjudicial or power of sale foreclosure,  
10 subject to all applicable provisions of this chapter and chapter  
11 667.

12 (b) In addition to the wording required by section  
13 667-92(b), any notice of default and intention to foreclose  
14 given by an association under section 667-92(a) shall also  
15 contain wording substantially similar to the following in all  
16 capital letters and printed in not less than fourteen-point  
17 font:

18 "THIS NOTICE PERTAINS TO AMOUNTS DUE AND OWING TO THE  
19 ASSOCIATION FOR WHICH THE ASSOCIATION HAS A STATUTORY OR  
20 RECORDED LIEN. THIS NOTICE DOES NOT PERTAIN TO OBLIGATIONS  
21 OWED BY YOU TO OTHER CREDITORS, INCLUDING ANY OUTSTANDING



1 MORTGAGE DEBT. YOU SHOULD CONSULT YOUR OTHER CREDITORS,  
2 INCLUDING YOUR MORTGAGEES, IF ANY, AS TO THE EFFECT THE  
3 FORECLOSURE OF THE ASSOCIATION'S LIEN WILL HAVE ON YOUR  
4 OTHER OUTSTANDING DEBTS."

5 (c) The association's power of sale provided in section  
6 514B-146(a) may not be exercised against:

7 (1) Any lien that arises solely from fines, penalties,  
8 legal fees, or late fees, and the foreclosure of any  
9 such lien shall be filed in court pursuant to part IA  
10 of chapter 667;

11 (2) Any unit owned by a person who is on military  
12 deployment outside of the State of Hawaii as a result  
13 of active duty military status with any branch of the  
14 United States military. The foreclosure of any such  
15 lien shall be filed in court pursuant to part IA of  
16 chapter 667, this subsection shall not apply if the  
17 lien of the association has been outstanding for a  
18 period of one year or longer; or

19 (3) Any unit while the nonjudicial or power of sale  
20 foreclosure has been stayed pursuant to section  
21 667-92(c)."



1 SECTION 3. Section 514B-146, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

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

10 (2) Except as provided in subsection (j), all sums unpaid  
11 on any mortgage of record that was recorded prior to  
12 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  
19 of a recorded lien shall in no way affect the association's  
20 automatic lien that arises pursuant to this subsection or the  
21 declaration or bylaws. Any proceedings to enforce an



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

10 The lien of the association may be foreclosed by action or  
11 by nonjudicial or power of sale foreclosure [~~procedures set~~  
12 ~~forth in chapter 667~~], regardless of the presence or absence of  
13 power of sale language in an association's governing documents,  
14 by the managing agent or board, acting on behalf of the  
15 association and in the name of the association; provided that no  
16 association may exercise the nonjudicial or power of sale  
17 remedies provided in chapter 667 to foreclose a lien against any  
18 unit that arises solely from fines, penalties, legal fees, or  
19 late fees, and the foreclosure of any such lien shall be filed  
20 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 SECTION 4. Section 667-1, Hawaii Revised Statutes, is  
16 amended by amending the definition of "power of sale" to read as  
17 follows:

18 ""Power of sale" or "power of sale foreclosure" means a  
19 nonjudicial foreclosure when [the]:

20 (1) The mortgage contains, authorizes, permits, or  
21 provides for a power of sale, a power of sale



1 foreclosure, a power of sale remedy, or a nonjudicial  
2 foreclosure [-]; or

3 (2) For the purposes of part VI, an association enforces  
4 its claim of an association lien, regardless of  
5 whether the association documents provide for a power  
6 of sale, a power of sale foreclosure, a power of sale  
7 remedy, or a nonjudicial foreclosure."

8 SECTION 5. Sections 3 and 4 of this Act shall be applied  
9 retroactively to any case, action, proceeding, or claim arising  
10 out of a nonjudicial foreclosure under section 667-5 (repealed  
11 June 28, 2012), Hawaii Revised Statutes, and parts II and VI of  
12 chapter 667, Hawaii Revised Statutes, that arose before the  
13 effective date of this Act and in which a final non-appealable  
14 judgment has not yet been entered.

15 SECTION 6. This Act shall not be applied so as to impair  
16 any contract existing as of the effective date of this Act in a  
17 manner violative of either the Hawaii State Constitution or  
18 Article I, section 10, of the United States Constitution.

19 SECTION 7. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

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

6 SECTION 9. This Act shall take effect upon its approval;  
7 provided that the amendments made to section 514B-146(a), Hawaii  
8 Revised Statutes, by section 3 of this Act shall not be repealed  
9 when that section is reenacted on June 30, 2020, pursuant to  
10 section 6 of Act 195, Session Laws of Hawaii 2018.

APPROVED this                      day of                      , 2019


GOVERNOR OF THE STATE OF HAWAII




**THE SENATE OF THE STATE OF HAWAI'I**

Date: April 30, 2019  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
President of the Senate

  
Clerk of the Senate

SB No. 551, SD 1, HD 2, CD 1


THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives