

JAN 18 2019

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 questions have
2 arisen as to whether condominium associations have the authority
3 to exercise the remedy of nonjudicial foreclosure in the absence
4 of power of sale language in their governing documents.

5 The reference to "power of sale foreclosure procedures" in
6 existing law signifies that matters such as the manner, means
7 and timing of providing notice, and other procedural aspects of
8 the nonjudicial foreclosure process shall conform to the
9 procedures described in chapter 667. However, this reference is
10 not intended to signify that an association must include power
11 of sale language in its governing documents. The purpose of
12 this Act is to clarify that associations may exercise the remedy
13 of nonjudicial foreclosure regardless of the presence or absence
14 of power of sale language within their governing documents.

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



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

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

8 (2) Except as provided in subsection (j), all sums unpaid
9 on any mortgage of record that was recorded prior to
10 the recordation of a notice of a lien by the
11 association, and costs and expenses including
12 attorneys' fees provided in such mortgages;
13 provided that a lien recorded by an association for unpaid
14 assessments shall expire six years from the date of recordation
15 unless proceedings to enforce the lien are instituted prior to
16 the expiration of the lien; provided further that the expiration
17 of a recorded lien shall in no way affect the association's
18 automatic lien that arises pursuant to this subsection or the
19 declaration or bylaws. Any proceedings to enforce an
20 association's lien for any assessment shall be instituted within
21 six years after the assessment became due; provided that if the



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

8 The lien of the association may be foreclosed by action or
9 by nonjudicial or power of sale foreclosure [~~procedures set~~
10 ~~forth in chapter 667,~~] by the managing agent or board, acting on
11 behalf of the association and in the name of the association[~~+~~].
12 The governing documents of every association shall be deemed to
13 include a power of sale provision, sufficient to enable the
14 exercise of a nonjudicial foreclosure remedy, regardless of the
15 presence or absence of power of sale language in an association's
16 governing documents. The foregoing remedies may be completed
17 using procedures set forth in chapter 667; provided that no
18 association may exercise the nonjudicial or power of sale
19 remedies provided in [~~chapter 667~~] this section to foreclose a
20 lien against any unit that arises solely from fines, penalties,



1 legal fees, or late fees, and the foreclosure of any such lien
2 shall be filed in court pursuant to part IA of chapter 667.

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

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Rosalyn H. Baker



S.B. NO. 551

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S.B. NO. 551

Report Title:

Condominiums; Associations; Nonjudicial Foreclosure Remedy

Description:

Clarifies that a condominium association may exercise nonjudicial or power of sale foreclosure remedies regardless of the presence or absence of power of sale language in an associations governing documents.

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