
A BILL FOR AN ACT

RELATING TO HOMEOWNERS' ASSOCIATIONS.

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

1 SECTION 1. Section 421J-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§421J-10.5 Association fiscal matters; lien for**
4 **assessments.** (a) All sums assessed by the association, but
5 unpaid for the share of the assessments chargeable to any unit,
6 shall constitute a lien on the unit. The priority of the
7 association's lien shall, except as otherwise provided by law,
8 be as provided in the association documents or, if no priority
9 is provided in the association documents, by the recordation
10 date of the liens; provided that any amendment to the
11 association documents that governs the priority of liens on the
12 unit shall not provide that an association lien shall have
13 priority over a mortgage lien that is recorded before the
14 amendment is recorded. A lien recorded by an association for
15 unpaid assessments shall expire six years from the date of
16 recordation unless proceedings to enforce the lien are
17 instituted prior to the expiration of the lien; provided that



1 the expiration of a recorded lien shall in no way affect the
2 association's automatic lien that arises pursuant to this
3 subsection or the association documents. Any proceedings to
4 enforce an association's lien for any assessment shall be
5 instituted within six years after the assessment became due;
6 provided that if the owner of a unit subject to a lien of the
7 association files a petition for relief under the United States
8 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
9 instituting proceedings to enforce the association's lien shall
10 be tolled until thirty days after the automatic stay of
11 proceedings under section 362 of the United States Bankruptcy
12 Code (11 U.S.C. §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. In any



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

15 In the case of a voluntary conveyance, the grantee of a
16 unit shall be jointly and severally liable with the grantor for
17 all unpaid assessments against the latter for the grantor's
18 share of the common expenses up to the time of the grant or
19 conveyance, without prejudice to the grantee's right to recover
20 from the grantor the amounts paid by the grantee. Any such
21 grantor or grantee is entitled to a statement from the board,



1 either directly or through its managing agent or resident
2 manager, setting forth the amount of the unpaid assessments
3 against the grantor. The grantee is not liable and the unit
4 conveyed is not subject to a lien for any unpaid assessments
5 against the grantor in excess of the amount set forth in the
6 statement, except as to the amount of subsequently dishonored
7 checks mentioned in the statement as having been received within
8 the thirty-day period immediately preceding the date of such
9 statement.

10 (b) Except as provided in subsection (g) or in the
11 association documents, when the mortgagee of a mortgage of
12 record or other purchaser of a unit obtains title to the unit as
13 a result of foreclosure of the mortgage, the acquirer of title
14 and the acquirer's successors and assigns shall not be liable
15 for the share of the assessments by the association chargeable
16 to the unit that became due prior to the acquisition of title to
17 the unit by the acquirer. The unpaid share of assessments shall
18 be deemed to be assessments collectible from all of the unit
19 owners, including the acquirer and the acquirer's successors and
20 assigns. The mortgagee of record or other purchaser of the unit



1 shall be deemed to acquire title and shall be required to pay
2 the unit's share of assessments beginning:

3 (1) Thirty-six days after the order confirming the sale to
4 the purchaser has been filed with the court;

5 (2) Sixty days after the hearing at which the court grants
6 the motion to confirm the sale to the purchaser;

7 (3) Thirty days after the public sale in a nonjudicial
8 power of sale foreclosure conducted pursuant to
9 chapter 667; or

10 (4) Upon the recording of the instrument of conveyance;
11 whichever occurs first; provided that the mortgagee of record or
12 other purchaser of the unit shall not be deemed to acquire title
13 under paragraph (1), (2), or (3), if transfer of title is
14 delayed past the thirty-six days specified in paragraph (1), the
15 sixty days specified in paragraph (2), or the thirty days
16 specified in paragraph (3), when a person (other than the
17 mortgagee of record or other purchaser of the unit) who appears
18 at the hearing on the motion or a party to the foreclosure
19 action (other than the mortgagee of record or other purchaser of
20 the unit) requests reconsideration of the motion or order to
21 confirm sale, objects to the form of the proposed order to



1 confirm sale, appeals the decision of the court to grant the
2 motion to confirm sale, or the debtor or mortgagor declares
3 bankruptcy or is involuntarily placed into bankruptcy. In any
4 such case, the mortgagee of record or other purchaser of the
5 unit shall be deemed to acquire title upon recordation of the
6 instrument of conveyance.

7 (c) Except as provided in section 667-92(c), no unit owner
8 shall withhold any assessment claimed by the association. A
9 unit owner who disputes the amount of an assessment may request
10 a written statement clearly indicating:

- 11 (1) The amount of regular and special assessments included
12 in the assessment, including the due date of each
13 amount claimed;
- 14 (2) The amount of any penalty, late fee, lien filing fee,
15 and any other charge included in the assessment;
- 16 (3) The amount of attorneys' fees and costs, if any,
17 included in the assessment;
- 18 (4) That under Hawaii law, a unit owner has no right to
19 withhold assessments for any reason;
- 20 (5) That a unit owner has a right to demand mediation to
21 resolve disputes about the amount or validity of an



1 association's assessment; provided that the unit owner
2 immediately pays the assessment in full and keeps
3 assessments current; and

4 (6) That payment in full of the assessment does not
5 prevent the unit owner from contesting the assessment
6 or receiving a refund of amounts not owed.

7 Nothing in this section shall limit the rights of a unit owner
8 to the protection of all fair debt collection procedures
9 mandated under federal and state law.

10 (d) [A] Except as provided in subsection (j), a unit owner
11 who pays an association the full amount claimed by the
12 association may file a claim against the association in court,
13 including small claims court, or require the association to
14 mediate under section 421J-13 to resolve any disputes concerning
15 the amount or validity of the association's claim. If the unit
16 owner and the association are unable to resolve the dispute
17 through mediation, either party may file for relief with a
18 court; provided that a unit owner may only file for relief in
19 court if all amounts claimed by the association are paid in full
20 on or before the date of filing. If the unit owner fails to
21 keep all association assessments current during the court



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1 hearing, the association may ask the court to temporarily
2 suspend the proceedings. If the unit owner pays all association
3 assessments within thirty days of the date of suspension, the
4 unit owner may ask the court to recommence the proceedings. If
5 the unit owner fails to pay all association assessments by the
6 end of the thirty-day period, the association may ask the court
7 to dismiss the proceedings. The unit owner shall be entitled to
8 a refund of any amounts paid to the association that are not
9 owed.

10 (e) In conjunction with or as an alternative to
11 foreclosure proceedings under subsection (a), where a unit is
12 owner-occupied, the association may authorize its managing agent
13 or board, after sixty days written notice to the unit owner of
14 the unit's share of the assessments, to terminate the delinquent
15 unit's access to the common areas and cease supplying a
16 delinquent unit with any and all services normally supplied or
17 paid for by the association. Any terminated services and
18 privileges shall be restored upon payment of all delinquent
19 assessments, but need not be restored until payment in full is
20 received.



1 (f) Before the board or managing agent may take the
2 actions permitted under subsection (e), the board shall adopt a
3 written policy providing for such actions and have the policy
4 approved by a majority vote of the unit owners, as provided in
5 the association documents, who are present in person or by proxy
6 or as otherwise permitted by the association documents, at an
7 annual or special meeting of the association or by the written
8 consent of a voting interest equal to a quorum of the unit
9 owners unless the association documents already permit the
10 process.

11 (g) Subject to this subsection and subsection (h), the
12 board may specially assess the amount of the unpaid regular
13 periodic assessments for assessments against a person who, in a
14 judicial or nonjudicial power of sale foreclosure, purchases a
15 delinquent unit; provided that:

16 (1) A purchaser who holds a mortgage on a delinquent unit,
17 which mortgage is not subordinate to the priority of
18 lien by the association, and who acquires the
19 delinquent unit through a judicial or nonjudicial
20 foreclosure proceeding, including purchasing the
21 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 a 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 periodic assessments that were assessed during the six



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1 months immediately preceding the completion of the judicial or
2 nonjudicial power of sale foreclosure.

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

5 "Completion" means:

6 (1) In a nonjudicial power of sale foreclosure, when the
7 affidavit required under section 667-33 is recorded;
8 and

9 (2) In a judicial foreclosure, when a purchaser is deemed
10 to acquire title pursuant to subsection (b).

11 "Regular periodic assessments" does not include:

12 (1) Any special assessment, except for a special
13 assessment imposed on all units as part of a budget
14 adopted pursuant to the association documents;

15 (2) Late charges, fines, or penalties;

16 (3) Interest assessed by the association;

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

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



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1 (j) If an association is a homeowners' association and the
 2 dispute between the homeowners' association and the unit owner
 3 concerns the unit owner's construction of a nonconforming
 4 structure, the homeowners' association shall not require the
 5 unit owner to pay the homeowners' association the full amount
 6 claimed by the homeowners' association on, or prior to, the date
 7 of filing a claim against the homeowners' association in court,
 8 including small claims court, or requiring the homeowners'
 9 association to mediate under section 421J-13."

10 SECTION 2. This Act does not affect rights and duties that
 11 matured, penalties that were incurred, and proceedings that were
 12 begun before its effective date.

13 SECTION 3. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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Report Title:

Homeowners' Association; Remedies; Nonconforming Structures

Description:

Prohibits a homeowners' association from requiring a unit owner to pay the full amount claimed by the association prior to the unit owner's filing of a claim against the association in court or requiring the association to mediate, if the dispute concerns the unit owner's construction of a nonconforming structure.

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

