

## ACT 39

S.B. NO. 2333

A Bill for an Act Relating to Condominiums Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that due to the current economic situation many condominium owners have been unable to meet payments for either their mortgage or maintenance expenses. Mortgagees have lost significant amounts during this period. Homeowners associations have, likewise, lost much during this period. Both are innocent victims of these economic times. Homeowners associations and mortgage lenders have participated in many hearings and discussions with the legislature over the years. Attempts to find a solution have been hampered because both parties are innocent victims. While a solution has been elusive, this Act goes a long way toward resolving the issue in a creative and fair manner.

This Act allows for the assessment of purchasers of delinquent units for unpaid common expenses by the homeowners association. The assessment is limited to the amount accrued within six months up to \$1,800. In order to make the assessment, homeowners associations must file a notice of lien against the delinquent apartment before the purchaser acquires title. This is only fair, providing the purchaser with actual notice of the total amount of the delinquencies.

This Act is a comprehensive and reasonable solution to a thorny issue.

SECTION 2. Section 514A-90, Hawaii Revised Statutes, is amended to read as follows:

“§514A-90 Priority of lien. (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the apartment; and
- (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including attorneys’ fees provided in such mortgages.

The lien of the association of apartment owners may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board of directors, acting on behalf of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) [Where] Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer’s successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer’s successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment’s share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser; or
- (3) Upon the recording of the deed,

whichever occurs first.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys’ fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;
- (5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association’s assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

(f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners.

(g) Subject to this subsection, and subsections (h) and (i), the board of an association of apartment owners may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent apartment; provided that:

- (1) A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the association of apartment owners and who acquires the delinquent apartment through a judicial or non-judicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and
- (2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the association of apartment owners has filed a notice of lien against the delinquent apartment for the unpaid assessments for common area expenses which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure, and for which the association of apartment owners had filed a notice of lien against the delinquent apartment pursuant to subsection (g)(2). In no event shall the amount of the special assessment exceed the sum of \$1,800.

(i) For purposes of subsections (g) and (h), the following definitions shall apply:

- (1) "Completion" means:
  - (A) In a non-judicial power of sale foreclosure, when the affidavit required under section 667-5 is filed; and
  - (B) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).
- (2) "Regular monthly common assessments" shall not include:
  - (A) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section 514A-83.6;
  - (B) Late charges, fines, or penalties;
  - (C) Interest assessed by the association of apartment owners;
  - (D) Any lien arising out of the assessment; or
  - (E) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on December 31, 2003; provided that section 514A-90, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved April 26, 2000.)