
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

PART I

1
2 SECTION 1. The legislature finds that it is important to
3 have clear and effective rules related to association
4 foreclosures on condominiums, including which actions
5 successfully cure a default. The legislature further finds that
6 a condominium owner and an association agreeing to a payment
7 plan is not sufficient to cure a default. Rather, agreeing to a
8 payment plan and paying the delinquency in full is required for
9 a unit owner to cure a nonjudicial foreclosure on a condominium.
10 The legislature further finds that existing law requires
11 condominium owners to pay all assessments claimed by an
12 association first, prior to initiating a dispute over
13 assessments. The legislature additionally finds that preserving
14 this pay first, dispute later provision as it applies to common
15 expense assessments is important. However, encouraging the use
16 of mediation for all other penalties or fines, late fees, lien



1 filing fees, or other charges in an assessment will be
2 beneficial to condominium owners and associations.

3 Accordingly, the purpose of parts II through IV of this Act
4 is to:

- 5 (1) Clarify that an association does not have to rescind
6 the notice of default and intention to foreclose or
7 restart the foreclosure by filing a new notice of
8 default and intent to foreclose if a unit owner
9 defaults on a payment plan to cure a nonjudicial
10 foreclosure agreed to by the parties;
- 11 (2) Specify that if a unit owner and an association have
12 agreed on a payment plan to prevent a nonjudicial
13 foreclosure from proceeding, any association fines
14 imposed while the payment plan is in effect shall not
15 be deemed a default under the payment plan;
- 16 (3) Clarify the obligations of a unit owner and an
17 association while a unit owner is not otherwise in
18 default under a payment plan;
- 19 (4) Clarify that the pay first, dispute later provisions
20 in Hawaii's condominium law apply only to common



- 1 expense assessments claimed by an association of
- 2 apartment owners;
- 3 (5) Specify that a unit or apartment owner who disputes
- 4 the amount of an assessment may request a written
- 5 statement about the assessment from the association,
- 6 including that a unit or apartment owner may demand
- 7 mediation prior to paying contested charges, other
- 8 than common expense assessments;
- 9 (6) Specify requirements for mediation on contested
- 10 charges, except for common expense assessments; and
- 11 (7) Make conforming amendments.

PART II

13 SECTION 2. Section 667-94, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§667-94[+] **Cure of default.** (a) If the default is
 16 cured as required by the notice of default and intention to
 17 foreclose[, or if the parties have agreed on a payment plan],
 18 the association shall rescind the notice of default and
 19 intention to foreclose. If, pursuant to section 667-92(c), the
 20 parties agree on a payment plan to cure the default, the notice
 21 of default and intention to foreclose shall be put on hold until



1 the payment plan is completed. Within fourteen days of the date
2 of the cure or an agreement on a payment plan, the association
3 shall so notify any person who was served with the notice of
4 default and intention to foreclose. If the default is cured, or
5 the payment plan is completed according to its terms, and the
6 notice of default and intention to foreclose was recorded, a
7 release of the notice of default and intention to foreclose
8 shall be recorded.

9 (b) If the default is not cured as required by the notice
10 of default and intention to foreclose, [~~or~~] the parties have not
11 agreed on a payment plan, or the parties have agreed on a
12 payment plan but a default occurs under the payment plan, the
13 association, without filing a court action and without going to
14 court, may foreclose the association's lien under power of sale
15 to sell the unit at a public sale.

16 (c) If the parties have agreed on a payment plan to
17 prevent a foreclosure from proceeding, any unpaid fines the
18 association imposes on the unit owner while the payment plan is
19 in effect shall not be deemed a default under the payment plan.
20 As long as the unit owner is not otherwise in default under the
21 payment plan, the:



- 1 (1) Association shall notify the unit owner in writing of
- 2 the right to mediation;
- 3 (2) Fines and any attorneys' fees incurred with respect to
- 4 such fines shall not be deducted from the unit owner's
- 5 payments pursuant to the payment plan; and
- 6 (3) Parties shall attempt to resolve a dispute over fines
- 7 and attorneys' fees, if any, through mediation, within
- 8 thirty days of the association's written notice.

9 If the unit owner refuses to participate in mediation or
 10 defaults under the payment plan, or the parties are unable to
 11 resolve the dispute through mediation, the association may then
 12 commence foreclosure proceedings."

PART III

14 SECTION 3. Section 514A-15.1, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "[+]§514A-15.1[+] **Common expenses; prior late charges.** No
 17 association of apartment owners shall deduct and apply portions
 18 of common expense payments received from an apartment owner to
 19 unpaid late fees (other than amounts remitted by an apartment
 20 owner in payment of late fees) [~~unless it delivers or mails a~~



1 ~~written notice to such apartment owner, at least seven days~~
2 ~~prior to the first such deduction, which states that:~~

3 ~~(1) Failure to pay late fees will result in the deduction~~
4 ~~of late fees from future common expense payments, so~~
5 ~~long as a delinquency continues to exist.~~

6 ~~(2) Late fees shall be imposed against any future common~~
7 ~~expense payment which is less than the full amount~~
8 ~~owed due to the deduction of unpaid late fees from~~
9 ~~such payment]."~~

10 SECTION 4. Section 514A-90, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§514A-90 Priority of lien.** (a) All sums assessed by the
13 association of apartment owners but unpaid for the share of the
14 common expenses chargeable to any apartment constitute a lien on
15 the apartment prior to all other liens, except:

16 (1) Liens for taxes and assessments lawfully imposed by
17 governmental authority against the apartment; and

18 (2) All sums unpaid on any mortgage of record that was
19 recorded prior to the recordation of notice of a lien
20 by the association of apartment owners, and costs and



1 expenses including attorneys' fees provided in such
2 mortgages;
3 provided that a lien recorded by an association of apartment
4 owners for unpaid assessments shall expire six years from the
5 date of recordation unless proceedings to enforce the lien are
6 instituted prior to the expiration of the lien; provided further
7 that the expiration of a recorded lien shall in no way affect
8 the association of apartment owners' automatic lien that arises
9 pursuant to this subsection or the declaration or bylaws. Any
10 proceedings to enforce an association of apartment owners' lien
11 for any assessment shall be instituted within six years after
12 the assessment became due; provided that if the owner of an
13 apartment subject to a lien of the association of apartment
14 owners files a petition for relief under the United States
15 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
16 instituting proceedings to enforce the association of apartment
17 owners' lien shall be tolled until thirty days after the
18 automatic stay of proceedings under section 362 of the United
19 States Bankruptcy Code (11 U.S.C. §362) is lifted.

20 The lien of the association of apartment owners may be
21 foreclosed by action or by nonjudicial or power of sale



1 foreclosure procedures set forth in chapter 667, by the managing
2 agent or board of directors, acting on behalf of the association
3 of apartment owners and in the name of the association of
4 apartment owners; provided that no association of apartment
5 owners may exercise the nonjudicial or power of sale remedies
6 provided in chapter 667 to foreclose a lien against any
7 apartment that arises solely from fines, penalties, legal fees,
8 or late fees, and the foreclosure of any such lien shall be
9 filed in court pursuant to part IA of chapter 667.

10 In any such foreclosure, the apartment owner shall be
11 required to pay a reasonable rental for the apartment, if so
12 provided in the bylaws or the law, and the plaintiff in the
13 foreclosure shall be entitled to the appointment of a receiver to
14 collect the rental owed by the apartment owner or any tenant of
15 the apartment. If the association of apartment owners is the
16 plaintiff, it may request that its managing agent be appointed as
17 receiver to collect the rent from the tenant. The managing agent
18 or board of directors, acting on behalf of the association of
19 apartment owners and in the name of the association of apartment
20 owners, unless prohibited by the declaration, may bid on the
21 apartment at foreclosure sale, and acquire and hold, lease,



1 mortgage, and convey the apartment. Action to recover a money
2 judgment for unpaid common expenses shall be maintainable without
3 foreclosing or waiving the lien securing the unpaid common
4 expenses owed.

5 (b) Except as provided in subsection [~~(g)~~,] (j), when the
6 mortgagee of a mortgage of record or other purchaser of an
7 apartment obtains title to the apartment as a result of
8 foreclosure of the mortgage, the acquirer of title and the
9 acquirer's successors and assigns shall not be liable for the
10 share of the common expenses or assessments by the association of
11 apartment owners chargeable to the apartment that became due prior
12 to the acquisition of title to the apartment by the acquirer. The
13 unpaid share of common expenses or assessments shall be deemed to
14 be common expenses collectible from all of the apartment owners,
15 including the acquirer and the acquirer's successors and assigns.
16 The mortgagee of record or other purchaser of the apartment shall
17 be deemed to acquire title and shall be required to pay the
18 apartment's share of common expenses and assessments beginning:

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



1 (2) Sixty days after the hearing at which the court grants
2 the motion to confirm the sale to the purchaser;
3 (3) Thirty days after the public sale in a nonjudicial
4 power of sale foreclosure conducted pursuant to
5 chapter 667; or
6 (4) Upon the recording of the instrument of conveyance,
7 whichever occurs first; provided that the mortgagee of record or
8 other purchaser of the apartment shall not be deemed to acquire
9 title under paragraph (1), (2), or (3), if transfer of title is
10 delayed past the thirty-six days specified in paragraph (1), the
11 sixty days specified in paragraph (2), or the thirty days
12 specified in paragraph (3), when a person who appears at the
13 hearing on the motion or a party to the foreclosure action
14 requests reconsideration of the motion or order to confirm sale,
15 objects to the form of the proposed order to confirm sale,
16 appeals the decision of the court to grant the motion to confirm
17 sale, or the debtor or mortgagor declares bankruptcy or is
18 involuntarily placed into bankruptcy. In any such case, the
19 mortgagee of record or other purchaser of the apartment shall be
20 deemed to acquire title upon recordation of the instrument of
21 conveyance.



1 (c) ~~[No apartment owner shall withhold any assessment~~
2 ~~claimed by the association.]~~ An apartment owner who receives a
3 demand for payment from an association and disputes the amount
4 of an assessment may request a written statement clearly
5 indicating:

6 (1) The amount of common expenses included in the
7 assessment, including the due date of each amount
8 claimed;

9 (2) The amount of any penalty~~[r]~~ or fine, late fee, lien
10 filing fee, and any other charge included in the
11 assessment~~[r]~~ that is not imposed on all apartment
12 owners as a common expense; and

13 (3) The amount of attorneys' fees and costs, if any,
14 included in the assessment~~[r]~~.

15 (d) An apartment owner who disputes the information in the
16 written statement received from the association pursuant to
17 subsection (c) may request a subsequent written statement that
18 additionally informs the apartment owner that:

19 ~~[-(4) That under]~~ (1) Under Hawaii law, an apartment owner
20 has no right to withhold common expense assessments
21 for any reason;



1 ~~[-(5) That an]~~ (2) An apartment owner has a right to demand
2 mediation or arbitration to resolve disputes about the
3 amount or validity of an association's common expense
4 assessment; provided that the apartment owner
5 immediately pays the common expense assessment in full
6 and keeps common expense assessments current; ~~[and~~
7 ~~-(6) That payment]~~ (3) Payment in full of the common
8 expense assessment shall not prevent the owner from
9 contesting the common expense assessment or receiving
10 a refund of amounts not owed~~[-]~~; and
11 (4) If the apartment owner contests any penalty or fine,
12 late fee, lien filing fee, or other charges included
13 in the assessment, except common expense assessments,
14 the apartment owner may demand mediation as provided
15 in subsection (g) prior to paying those charges.
16 (e) No apartment owner shall withhold any common expense
17 assessment claimed by the association. Nothing in this section
18 shall limit the rights of an owner to the protection of all fair
19 debt collection procedures mandated under federal and state law.
20 ~~[-(d)]~~ (f) An apartment owner who pays an association the
21 full amount of the common expenses claimed by the association



1 may file in small claims court or require the association to
2 mediate to resolve any disputes concerning the amount or
3 validity of the association's common expense claim. If the
4 apartment owner and the association are unable to resolve the
5 dispute through mediation, either party may file for arbitration
6 under part VII; provided that an apartment owner may only file
7 for arbitration if all amounts claimed by the association as
8 common expenses are paid in full on or before the date of
9 filing. If the apartment owner fails to keep all association
10 common expense assessments current during the arbitration, the
11 association may ask the arbitrator to temporarily suspend the
12 arbitration proceedings. If the apartment owner pays all
13 association common expense assessments within thirty days of the
14 date of suspension, the apartment owner may ask the arbitrator
15 to recommence the arbitration proceedings. If the owner fails
16 to pay all association common expense assessments by the end of
17 the thirty-day period, the association may ask the arbitrator to
18 dismiss the arbitration proceedings. The apartment owner shall
19 be entitled to a refund of any amounts paid to the association
20 [~~which~~] as common expenses that are not owed.



1 (g) An apartment owner who contests the amount of any
2 attorneys' fees and costs, penalties or fines, late fees, lien
3 filing fees, or any other charges, except common expense
4 assessments, may make a demand in writing for mediation on the
5 validity of those other charges. The apartment owner has thirty
6 days from the date of the written statement requested pursuant
7 to subsection (d) to file demand for mediation on the disputed
8 charges, other than common expense assessments. If the
9 apartment owner fails to file for mediation within thirty days
10 of the date of the written statement requested pursuant to
11 subsection (d), the association may proceed with collection of
12 the other charges. If the apartment owner makes a request for
13 mediation within thirty days, the association shall be
14 prohibited from attempting to collect any of the disputed
15 charges until the association has participated in the mediation.
16 The mediation shall be completed within sixty days of the
17 apartment owner's request for mediation; provided that if the
18 mediation is not completed within sixty days or the parties are
19 unable to resolve the dispute by mediation, the association may
20 proceed with collection of all amounts due from the owner for
21 attorneys' fees and costs, penalties or fines, late fees, lien



1 filing fees, or any other charge that is not imposed on all
2 apartment owners as a common expense.

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

14 ~~[(f)]~~ (i) Before the board of directors or managing agent
15 may take the actions permitted under subsection ~~[(e)],~~ (h), the
16 board shall adopt a written policy providing for such actions
17 and have the policy approved by a majority vote of the apartment
18 owners at an annual or special meeting of the association or by
19 the written consent of a majority of the apartment owners.

20 ~~[(g)]~~ (j) Subject to this subsection, and subsections
21 ~~[(h)]~~ (k) and ~~[(i)],~~ (l), the board of an association of



1 apartment owners may specially assess the amount of the unpaid
2 regular monthly common assessments for common area expenses
3 against a person who, in a judicial or nonjudicial power of sale
4 foreclosure, purchases a delinquent apartment; provided that:

5 (1) A purchaser who holds a mortgage on a delinquent
6 apartment that was recorded prior to the filing of a
7 notice of lien by the association of apartment owners
8 and who acquires the delinquent apartment through a
9 judicial or nonjudicial foreclosure proceeding,
10 including purchasing the delinquent apartment at a
11 foreclosure auction, shall not be obligated to make,
12 nor be liable for, payment of the special assessment
13 as provided for under this subsection; and

14 (2) A person who subsequently purchases the delinquent
15 apartment from the mortgagee referred to in paragraph
16 (1) shall be obligated to make, and shall be liable
17 for, payment of the special assessment provided for
18 under this subsection; provided that the mortgagee or
19 subsequent purchaser may require the association of
20 apartment owners to provide at no charge a notice of
21 the association's intent to claim a lien against the



1 delinquent apartment for the amount of the special
2 assessment, prior to the subsequent purchaser's
3 acquisition of title to the delinquent apartment. The
4 notice shall state the amount of the special
5 assessment, how that amount was calculated, and the
6 legal description of the apartment.

7 ~~[(h)]~~ (k) The amount of the special assessment assessed
8 under subsection ~~[(g)]~~ (j) shall not exceed the total amount of
9 unpaid regular monthly common assessments that were assessed
10 during the six months immediately preceding the completion of
11 the judicial or nonjudicial power of sale foreclosure.

12 ~~[(i)]~~ (l) For purposes of subsections ~~[(g)]~~ (j) and ~~[(h)]~~ (k),
13 the following definitions shall apply:

14 "Completion" means:

15 (1) In a nonjudicial power of sale foreclosure, when
16 the affidavit after public sale is recorded
17 pursuant to section 667-33; and

18 (2) In a judicial foreclosure, when a purchaser is
19 deemed to acquire title pursuant to subsection
20 (b).

21 "Regular monthly common assessments" shall not include:



- 1 (1) Any other special assessment, except for a special
- 2 assessment imposed on all apartments as part of a
- 3 budget adopted pursuant to section 514A-83.6;
- 4 (2) Late charges, fines, or penalties;
- 5 (3) Interest assessed by the association of apartment
- 6 owners;
- 7 (4) Any lien arising out of the assessment; or
- 8 (5) Any fees or costs related to the collection or
- 9 enforcement of the assessment, including attorneys'
- 10 fees and court costs."

11 SECTION 5. Section 514B-105, Hawaii Revised Statutes, is
 12 amended by amending subsection (c) to read as follows:

13 "(c) No association shall deduct and apply portions of
 14 common expense payments received from a unit owner to unpaid
 15 late fees, legal fees, fines, and interest (other than amounts
 16 remitted by a unit in payment of late fees, legal fees, fines,
 17 and interest) [~~unless the board adopts and distributes to all~~
 18 ~~owners a policy stating that:~~

- 19 ~~(1) Failure to pay late fees, legal fees, fines, and~~
- 20 ~~interest may result in the deduction of such late~~
- 21 ~~fees, legal fees, fines, and interest from future~~



1 ~~common expense payments, so long as a delinquency~~
2 ~~continues to exist, and~~
3 ~~(2) Late fees may be imposed against any future common~~
4 ~~expense payment that is less than the full amount owed~~
5 ~~due to the deduction of unpaid late fees, legal fees,~~
6 ~~finer, and interest from the payment]."~~

7 SECTION 6. Section 514B-146, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§514B-146 Association fiscal matters; lien for**
10 **assessments.** (a) All sums assessed by the association but
11 unpaid for the share of the common expenses chargeable to any
12 unit shall constitute a lien on the unit with priority over all
13 other liens, except:

14 (1) Liens for real property taxes and assessments lawfully
15 imposed by governmental authority against the unit;
16 and
17 (2) Except as provided in subsection ~~[(g),]~~ (j), all sums
18 unpaid on any mortgage of record that was recorded
19 prior to the recordation of a notice of a lien by the
20 association, and costs and expenses including
21 attorneys' fees provided in such mortgages;



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

17 The lien of the association may be foreclosed by action or
18 by nonjudicial or power of sale foreclosure procedures set forth
19 in chapter 667, by the managing agent or board, acting on behalf
20 of the association and in the name of the association; provided
21 that no association may exercise the nonjudicial or power of



1 sale remedies provided in chapter 667 to foreclose a lien
2 against any unit that arises solely from fines, penalties, legal
3 fees, or late fees, and the foreclosure of any such lien shall
4 be filed in court pursuant to part IA of chapter 667.

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

19 (b) Except as provided in subsection [~~(g)~~] (j), when the
20 mortgagee of a mortgage of record or other purchaser of a unit
21 obtains title to the unit as a result of foreclosure of the



1 mortgage, the acquirer of title and the acquirer's successors
2 and assigns shall not be liable for the share of the common
3 expenses or assessments by the association chargeable to the
4 unit that became due prior to the acquisition of title to the
5 unit by the acquirer. The unpaid share of common expenses or
6 assessments shall be deemed to be common expenses collectible
7 from all of the unit owners, including the acquirer and the
8 acquirer's successors and assigns. The mortgagee of record or
9 other purchaser of the unit shall be deemed to acquire title and
10 shall be required to pay the unit's share of common expenses and
11 assessments beginning:

- 12 (1) Thirty-six days after the order confirming the sale to
13 the purchaser has been filed with the court;
- 14 (2) Sixty days after the hearing at which the court grants
15 the motion to confirm the sale to the purchaser;
- 16 (3) Thirty days after the public sale in a nonjudicial
17 power of sale foreclosure conducted pursuant to
18 chapter 667; or
- 19 (4) Upon the recording of the instrument of conveyance;
20 whichever occurs first; provided that the mortgagee of record or
21 other purchaser of the unit shall not be deemed to acquire title



1 under paragraph (1), (2), or (3), if transfer of title is
2 delayed past the thirty-six days specified in paragraph (1), the
3 sixty days specified in paragraph (2), or the thirty days
4 specified in paragraph (3), when a person who appears at the
5 hearing on the motion or a party to the foreclosure action
6 requests reconsideration of the motion or order to confirm sale,
7 objects to the form of the proposed order to confirm sale,
8 appeals the decision of the court to grant the motion to confirm
9 sale, or the debtor or mortgagor declares bankruptcy or is
10 involuntarily placed into bankruptcy. In any such case, the
11 mortgagee of record or other purchaser of the unit shall be
12 deemed to acquire title upon recordation of the instrument of
13 conveyance.

14 (c) [~~No unit owner shall withhold any assessment claimed~~
15 ~~by the association.~~] A unit owner who received a demand for
16 payment from an association and disputes the amount of an
17 assessment may request a written statement clearly indicating:

18 (1) The amount of common expenses included in the
19 assessment, including the due date of each amount
20 claimed;



1 (2) The amount of any penalty~~[7]~~ or fine, late fee, lien
2 filing fee, and any other charge included in the
3 assessment~~[7]~~ that is not imposed on all unit owners
4 as a common expense; and

5 (3) The amount of attorneys' fees and costs, if any,
6 included in the assessment~~[7]~~.

7 (d) A unit owner who disputes the information in the
8 written statement received from the association pursuant to
9 subsection (c) may request a subsequent written statement that
10 additionally informs the unit owner that:

11 ~~[(4) That under]~~ (1) Under Hawaii law, a unit owner has no
12 right to withhold common expense assessments for any
13 reason;

14 ~~[(5) That a]~~ (2) A unit owner has a right to demand
15 mediation or arbitration to resolve disputes about the
16 amount or validity of an association's common expense
17 assessment~~[7]~~; provided that the unit owner
18 immediately pays the common expense assessment in full
19 and keeps common expense assessments current; ~~[and~~

20 ~~(6) That payment]~~ (3) Payment in full of the common
21 expense assessment ~~[does]~~ shall not prevent the owner



1 from contesting the common expense assessment or
2 receiving a refund of amounts not owed[-]; and
3 (4) If the unit owner contests any penalty or fine, late
4 fee, lien filing fee, or other charges included in the
5 assessment, except common expense assessments, the
6 unit owner may demand mediation as provided in
7 subsection (g) prior to paying those charges.

8 (e) No unit owner shall withhold any common expense
9 assessment claimed by the association. Nothing in this section
10 shall limit the rights of an owner to the protection of all fair
11 debt collection procedures mandated under federal and state law.

12 [~~(d)~~] (f) A unit owner who pays an association the full
13 amount of the common expenses claimed by the association may
14 file in small claims court or require the association to mediate
15 to resolve any disputes concerning the amount or validity of the
16 association's common expense claim. If the unit owner and the
17 association are unable to resolve the dispute through mediation,
18 either party may file for arbitration under section 514B-162;
19 provided that a unit owner may only file for arbitration if all
20 amounts claimed by the association as common expenses are paid
21 in full on or before the date of filing. If the unit owner



1 fails to keep all association common expense assessments current
2 during the arbitration, the association may ask the arbitrator
3 to temporarily suspend the arbitration proceedings. If the unit
4 owner pays all association common expense assessments within
5 thirty days of the date of suspension, the unit owner may ask
6 the arbitrator to recommence the arbitration proceedings. If
7 the owner fails to pay all association common expense
8 assessments by the end of the thirty-day period, the association
9 may ask the arbitrator to dismiss the arbitration proceedings.
10 The unit owner shall be entitled to a refund of any amounts paid
11 as common expenses to the association [~~which~~] that are not owed.

12 (g) A unit owner who contests the amount of any attorneys'
13 fees and costs, penalties or fines, late fees, lien filing fees,
14 or any other charges, except common expense assessments, may
15 make a demand in writing for mediation on the validity of those
16 other charges. The unit owner has thirty days from the date of
17 the written statement requested pursuant to subsection (d) to
18 file demand for mediation on the disputed charges, other than
19 common expense assessments. If the unit owner fails to file for
20 mediation within thirty days of the date of the written
21 statement requested pursuant to subsection (d), the association



1 may proceed with collection of the other charges. If the unit
2 owner makes a request for mediation within thirty days, the
3 association shall be prohibited from attempting to collect any
4 of the disputed charges until the association has participated
5 in the mediation. The mediation shall be completed within sixty
6 days of the unit owner's request for mediation; provided that if
7 the mediation is not completed within sixty days or the parties
8 are unable to resolve the dispute by mediation, the association
9 may proceed with collection of all amounts due from the owner
10 for attorneys' fees and costs, penalties or fines, late fees,
11 lien filing fees, or any other charge that is not imposed on all
12 unit owners as a common expense.

13 ~~(e)~~ (h) In conjunction with or as an alternative to
14 foreclosure proceedings under subsection (a), where a unit is
15 owner-occupied, the association may authorize its managing agent
16 or board to, after sixty days' written notice to the unit owner
17 and to the unit's first mortgagee of the nonpayment of the
18 unit's share of the common expenses, terminate the delinquent
19 unit's access to the common elements and cease supplying a
20 delinquent unit with any and all services normally supplied or
21 paid for by the association. Any terminated services and



1 privileges shall be restored upon payment of all delinquent
2 assessments but need not be restored until payment in full is
3 received.

4 ~~[(f)]~~ (i) Before the board or managing agent may take the
5 actions permitted under subsection ~~[(e)]~~, (h), the board shall
6 adopt a written policy providing for such actions and have the
7 policy approved by a majority vote of the unit owners at an
8 annual or special meeting of the association or by the written
9 consent of a majority of the unit owners.

10 ~~[(g)]~~ (j) Subject to this subsection, and subsections
11 ~~[(h)]~~ (k) and ~~[(i)]~~, (l), the board may specially assess the
12 amount of the unpaid regular monthly common assessments for
13 common expenses against a mortgagee or other purchaser who, in a
14 judicial or nonjudicial power of sale foreclosure, purchases a
15 delinquent unit; provided that the mortgagee or other purchaser
16 may require the association to provide at no charge a notice of
17 the association's intent to claim lien against the delinquent
18 unit for the amount of the special assessment, prior to the
19 subsequent purchaser's acquisition of title to the delinquent
20 unit. The notice shall state the amount of the special



1 assessment, how that amount was calculated, and the legal
2 description of the unit.

3 ~~[(h)]~~ (k) The amount of the special assessment assessed
4 under subsection ~~[(g)]~~ (j) shall not exceed the total amount of
5 unpaid regular monthly common assessments that were assessed
6 during the six months immediately preceding the completion of
7 the judicial or nonjudicial power of sale foreclosure.

8 ~~[(i)]~~ (1) For purposes of subsections ~~[(g)]~~ (j) and ~~[(h)]~~,
9 (k), the following definitions shall apply, unless the context
10 requires otherwise:

11 "Completion" means:

- 12 (1) In a nonjudicial power of sale foreclosure, when the
13 affidavit after public sale is recorded pursuant to
14 section 667-33; and
15 (2) In a judicial foreclosure, when a purchaser is deemed
16 to acquire title pursuant to subsection (b).

17 "Regular monthly common assessments" does not include:

- 18 (1) Any other special assessment, except for a special
19 assessment imposed on all units as part of a budget
20 adopted pursuant to section 514B-148;
21 (2) Late charges, fines, or penalties;



- 1 (3) Interest assessed by the association;
- 2 (4) Any lien arising out of the assessment; or
- 3 (5) Any fees or costs related to the collection or
- 4 enforcement of the assessment, including attorneys'
- 5 fees and court costs.

6 ~~[(j)]~~ (m) The cost of a release of any lien filed pursuant

7 to this section shall be paid by the party requesting the

8 release.

9 ~~[(k)]~~ (n) After any judicial or nonjudicial foreclosure

10 proceeding in which the association acquires title to the unit,

11 any excess rental income received by the association from the

12 unit shall be paid to existing lien holders based on the

13 priority of lien, and not on a pro rata basis, and shall be

14 applied to the benefit of the unit owner. For purposes of this

15 subsection, excess rental income shall be any net income

16 received by the association after a court has issued a final

17 judgment determining the priority of a senior mortgagee and

18 after paying, crediting, or reimbursing the association or a

19 third party for:

- 20 (1) The lien for delinquent assessments pursuant to
- 21 subsections (a) and (b);



- 1 (2) Any maintenance fee delinquency against the unit;
 - 2 (3) Attorney's fees and other collection costs related to
 - 3 the association's foreclosure of the unit; or
 - 4 (4) Any costs incurred by the association for the rental,
 - 5 repair, maintenance, or rehabilitation of the unit
 - 6 while the association is in possession of the unit
 - 7 including monthly association maintenance fees,
 - 8 management fees, real estate commissions, cleaning and
 - 9 repair expenses for the unit, and general excise taxes
 - 10 paid on rental income;
- 11 provided that the lien for delinquent assessments under
- 12 paragraph (1) shall be paid, credited, or reimbursed first."

13 **PART IV**

14 SECTION 7. The purpose of this part is to make a

15 conforming amendment pursuant to part III of this Act.

16 SECTION 8. Section 514A-121, Hawaii Revised Statutes, is

17 amended by amending subsection (b) to read as follows:

18 "(b) Nothing in subsection (a) shall be interpreted to

19 mandate the arbitration of any dispute involving:

- 20 (1) The real estate commission;
- 21 (2) The mortgagee of a mortgage of record;



- 1 (3) The developer, general contractor, subcontractors, or
2 design professionals for the project; provided that
3 when any person exempted by this paragraph is also an
4 apartment owner, a director, or managing agent, such
5 person shall, in those capacities, be subject to the
6 provisions of subsection (a);
- 7 (4) Actions seeking equitable relief involving threatened
8 property damage or the health or safety of apartment
9 owners or any other person;
- 10 (5) Actions to collect assessments that are liens or
11 subject to foreclosure; provided that an apartment
12 owner who pays the full amount of an assessment and
13 fulfills the requirements of section [~~514A-90(d)~~]
14 514A-90(f) shall have the right to demand arbitration
15 of the owner's dispute, including a dispute about the
16 amount and validity of the assessment;
- 17 (6) Personal injury claims;
- 18 (7) Actions for amounts in excess of \$2,500 against an
19 association of apartment owners, a board of directors,
20 or one or more directors, officers, agents, employees,
21 or other persons, if insurance coverage under a policy



1 or policies procured by the association of apartment
2 owners or its board of directors would be unavailable
3 because action by arbitration was pursued; or
4 (8) Any other cases which are determined, as provided in
5 section 514A-122, to be unsuitable for disposition by
6 arbitration."

7 **PART V**

8 SECTION 9. The legislature finds that mediation is an
9 existing and appropriate method of alternative dispute
10 resolution to address condominium related disputes. While the
11 courts are available to resolve conflicts, condominium law
12 should provide incentives for the meaningful use of alternative
13 dispute resolution mechanisms. Thus, the legislature further
14 finds that clarifying the conditions that mandate mediation and
15 exceptions to mandatory mediation is appropriate. The
16 legislature notes that the mandatory mediation proposed by this
17 part is intended to require parties to resolve condominium-
18 related disputes through the use of alternative dispute
19 resolution.

20 The legislature also finds expanding the scope of the
21 condominium education trust fund to cover voluntary binding



1 arbitration between interested parties will further encourage
2 the use of alternative dispute resolution for condominium
3 related disputes.

4 Accordingly, the purpose of this part is to:

- 5 (1) Expand the scope of the condominium education trust
6 fund to cover voluntary binding arbitration between
7 interested parties; and
8 (2) Amend the conditions that mandate mediation and
9 exceptions to mandatory mediation.

10 SECTION 10. Chapter 514B, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§514B- Voluntary binding arbitration. (a) Any parties
14 permitted to mediate condominium related disputes pursuant to
15 section 514B-161 may agree to enter into voluntary binding
16 arbitration, which may be supported with funds from the
17 condominium education trust fund pursuant to section 514B-71;
18 provided that voluntary binding arbitration under this section
19 may be supported with funds from the condominium education trust
20 fund only after the parties have first attempted evaluative
21 mediation.



1 (b) Any voluntary binding arbitration entered into
2 pursuant to this section and supported with funds from the
3 condominium education trust fund:

4 (1) Shall include a fee of \$175 to be paid by each party
5 to the arbitrator;

6 (2) Shall receive no more from the fund than is
7 appropriate under the circumstances, and in no event
8 more than \$6,000 total; and

9 (3) May include issues and parties in addition to those
10 identified in subsection (a); provided that a unit
11 owner or a developer and board are parties to the
12 arbitration at all times and the unit owner or
13 developer and the board mutually consent in writing to
14 the addition of such issues and parties."

15 SECTION 11. Section 514B-71, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The commission shall establish a condominium
18 education trust fund that the commission shall use for
19 educational purposes. Educational purposes shall include
20 financing or promoting:



- 1 (1) Education and research in the field of condominium
2 management, condominium project registration, and real
3 estate, for the benefit of the public and those
4 required to be registered under this chapter;
- 5 (2) The improvement and more efficient administration of
6 associations;
- 7 (3) Expeditious and inexpensive procedures for resolving
8 association disputes; [and]
- 9 (4) Support for mediation of condominium related
10 disputes [-]; and
- 11 (5) Support for voluntary binding arbitration between
12 parties in condominium related disputes, pursuant to
13 section 514B- ."

14 SECTION 12. Section 514B-161, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§514B-161 Mediation.** [~~(a) If an apartment owner or the~~
17 ~~board of directors requests mediation of a dispute involving the~~
18 ~~interpretation or enforcement of the association of apartment~~
19 ~~owners' declaration, bylaws, or house rules, the other party in~~
20 ~~the dispute shall be required to participate in mediation. Each~~
21 ~~party shall be wholly responsible for its own costs of~~



1 ~~participating in mediation, unless both parties agree that one~~
2 ~~party shall pay all or a specified portion of the mediation~~
3 ~~costs. If a party refuses to participate in the mediation of a~~
4 ~~particular dispute, a court may take this refusal into~~
5 ~~consideration when awarding expenses, costs, and attorneys'~~
6 ~~fees.~~

7 ~~(b) Nothing in subsection (a) shall be interpreted to~~
8 ~~mandate the mediation of any dispute involving:~~

- 9 ~~(1) Actions seeking equitable relief involving threatened~~
10 ~~property damage or the health or safety of association~~
11 ~~members or any other person;~~
- 12 ~~(2) Actions to collect assessments;~~
- 13 ~~(3) Personal injury claims; or~~
- 14 ~~(4) Actions against an association, a board, or one or~~
15 ~~more directors, officers, agents, employees, or other~~
16 ~~persons for amounts in excess of \$2,500 if insurance~~
17 ~~coverage under a policy of insurance procured by the~~
18 ~~association or its board would be unavailable for~~
19 ~~defense or judgment because mediation was pursued.~~



1 ~~(c) If any mediation under this section is not completed~~
2 ~~within two months from commencement, no further mediation shall~~
3 ~~be required unless agreed to by the parties.]~~

4 (a) The mediation of a dispute between a unit owner and
5 the board, unit owner and the managing agent, board members and
6 the board, or directors and managing agents and the board shall
7 be mandatory upon written request to the other party when:

8 (1) The dispute involves the interpretation or enforcement
9 of:

10 (A) The association's declaration, bylaws, or house
11 rules; or

12 (B) This chapter;

13 (2) The dispute falls outside the scope of subsection (b);

14 (3) The parties have not already mediated the same or a
15 substantially similar dispute; and

16 (4) An action or an arbitration concerning the dispute has
17 not been commenced.

18 (b) The mediation of a dispute between a unit owner and
19 the board, unit owner and the managing agent, board members and
20 the board, or directors and managing agents and the board shall
21 not be mandatory when the dispute involves:



1 (1) Threatened property damage or the health or safety of
2 unit owners or any other person;

3 (2) Assessments;

4 (3) Personal injury claims; or

5 (4) Matters that would affect the availability of any
6 coverage pursuant to an insurance policy obtained by
7 or on behalf of an association.

8 (c) If evaluative mediation is requested in writing by one
9 of the parties pursuant to subsection (a), the other party
10 cannot choose to do facilitative mediation instead, and any
11 attempt to do so shall be treated as a rejection to mediate.

12 (d) A unit owner or an association may apply to the
13 circuit court in the judicial circuit where the condominium is
14 located for an order compelling mediation only when:

15 (1) Mediation of the dispute is mandatory pursuant to
16 subsection (a);

17 (2) A written request for mediation has been delivered to
18 and received by the other party; and

19 (3) The parties have not agreed to a mediator and a
20 mediation date within forty-five days after a party
21 receives a written request for mediation.



1 (e) Any application made to the circuit court pursuant to
2 subsection (d) shall be made and heard in a summary manner and
3 in accordance with procedures for the making and hearing of
4 motions. The prevailing party shall be awarded its attorneys'
5 fees and costs in an amount not to exceed \$1,500.

6 (f) Each party to a mediation shall bear the attorneys'
7 fees, costs, and other expenses of preparing for and
8 participating in mediation incurred by the party, unless
9 otherwise specified in:

10 (1) A written agreement providing otherwise that is signed
11 by the parties;

12 (2) An order of a court in connection with the final
13 disposition of a claim that was submitted to
14 mediation;

15 (3) An award of an arbitrator in connection with the final
16 disposition of a claim that was submitted to
17 mediation; or

18 (4) An order of the circuit court in connection with
19 compelled mediation in accordance with subsection (e).

20 (g) Any individual mediation supported with funds from the
21 condominium education trust fund pursuant to section 514B-71:



- 1 (1) Shall include a fee of \$375 to be paid by each party
2 to the mediator;
- 3 (2) Shall receive no more from the fund than is
4 appropriate under the circumstances, and in no event
5 more than \$3,000 total;
- 6 (3) May include issues and parties in addition to those
7 identified in subsection (a); provided that a unit
8 owner or a developer and board are parties to the
9 mediation at all times and the unit owner or developer
10 and the board mutually consent in writing to the
11 addition of such issues and parties; and
- 12 (4) May include an evaluation by the mediator of any
13 claims presented during the mediation.
- 14 (h) A court or an arbitrator with jurisdiction may
15 consider a timely request to stay any action or proceeding
16 concerning a dispute that would be subject to mediation pursuant
17 to subsection (a) in the absence of the action or proceeding,
18 and refer the matter to mediation; provided that:
- 19 (1) The court or arbitrator determines that the request is
20 made in good faith and a stay would not be prejudicial
21 to any party; and



Report Title:

Condominiums; Condominium Associations; Owners; Cure of Default;
Disputed Charges; Common Expense Assessments; Mediation;
Arbitration; Condominium Education Trust Fund

Description:

Parts I through IV: clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium unit owner and association reach a payment plan to resolve a nonjudicial foreclosure; establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment; and makes conforming amendments. Part V: expands the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties; amends the conditions that mandate mediation and exceptions to mandatory mediation. Takes effect 1/7/2059. (SD2)

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

