

JAN 20 2017

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

PART I

SECTION 1. The legislature finds that it is important to have clear and effective rules related to association foreclosures on condominiums, including which actions successfully cure a default. The legislature further finds that a condominium owner and an association agreeing to a payment plan is not sufficient to cure a default. Rather, agreeing to a payment plan and paying the delinquency in full is required for a unit owner to cure a nonjudicial foreclosure on a condominium.

The legislature further finds that existing law requires condominium owners to pay all assessments claimed by an association first, prior to initiating a dispute over assessments. The legislature additionally finds that it is important to preserve the pay first, dispute later provision as it applies to common expense assessments. However, encouraging the use of mediation for all other penalties or fines, late



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

3 Accordingly, the purpose of this Act is to:

4 (1) Clarify that an association does not have to rescind
5 the notice of default and intention to foreclose or
6 restart the foreclosure by filing a new notice of
7 default and intent to foreclose if a unit owner
8 defaults on a payment plan to cure a nonjudicial
9 foreclosure agreed to by the parties;

10 (2) Specify that if a unit owner and an association have
11 agreed on a payment plan to prevent a nonjudicial
12 foreclosure from proceeding, any association fines
13 imposed while the payment plan is in effect shall not
14 be deemed a default under the payment plan;

15 (3) Clarify the obligations of a unit owner and an
16 association while a unit owner is not otherwise in
17 default under a payment plan;

18 (4) Clarify that the pay first, dispute later provisions
19 in Hawaii's condominium law apply only to common
20 expense assessments claimed by an association of
21 apartment owners;



- (5) Specify that a unit or apartment owner who disputes the amount of an assessment may:
- (A) Request a written statement about the assessment from the association; and
- (B) Demand mediation prior to paying contested charges, other than common expense assessments;
- (6) Specify requirements for mediation on contested charges, except for common expense assessments;
- (7) Repeal language that permitted associations to convert delinquent fines and late fees into delinquent maintenance fees, if certain conditions were met; and
- (8) Make conforming amendments.

PART II

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

"[+]§667-94[+] Cure of default. (a) If the default is cured as required by the notice of default and intention to foreclose[, ~~or if the parties have agreed on a payment plan~~], the association shall rescind the notice of default and intention to foreclose. If, pursuant to section 667-19, the parties agree on a payment plan to cure the default, the notice



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

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

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



1 as the unit owner is not otherwise in default under the payment
2 plan, the:

3 (1) Association shall notify the unit owner in writing of
4 the right to mediation;

5 (2) Fines and any attorneys' fees incurred with respect to
6 such fines shall not be deducted from the unit owner's
7 payments pursuant to the payment plan; and

8 (3) Parties shall attempt to resolve a dispute over fines
9 and attorneys' fees, if any, through mediation, within
10 thirty days of the association's written notice.

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

15 **PART III**

16 SECTION 3. Section 514A-90, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§514A-90 Priority of lien.** (a) All sums assessed by the
19 association of apartment owners but unpaid for the share of the
20 common expenses chargeable to any apartment shall constitute a
21 lien on the apartment prior to all other liens, except:



1 (1) Liens for taxes and assessments lawfully imposed by
2 governmental authority against the apartment; and
3 (2) All sums unpaid on any mortgage of record that was
4 recorded prior to the recordation of notice of a lien
5 by the association of apartment owners, and costs and
6 expenses including attorneys' fees provided in such
7 mortgages;
8 provided that a lien recorded by an association of apartment
9 owners for unpaid assessments shall expire six years from the
10 date of recordation unless proceedings to enforce the lien are
11 instituted prior to the expiration of the lien; provided further
12 that the expiration of a recorded lien shall in no way affect
13 the association of apartment owners' automatic lien that arises
14 pursuant to this subsection or the declaration or bylaws. Any
15 proceedings to enforce an association of apartment owners' lien
16 for any assessment shall be instituted within six years after
17 the assessment became due; provided that if the owner of an
18 apartment subject to a lien of the association of apartment
19 owners files a petition for relief under the United States
20 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
21 instituting proceedings to enforce the association of apartment



1 owners' lien shall be tolled until thirty days after the
2 automatic stay of proceedings under section 362 of the United
3 States Bankruptcy Code (11 U.S.C. §362) is lifted.

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

15 In any such foreclosure, the apartment owner shall be
16 required to pay a reasonable rental for the apartment, if so
17 provided in the bylaws or the law, and the plaintiff in the
18 foreclosure shall be entitled to the appointment of a receiver to
19 collect the rental owed by the apartment owner or any tenant of
20 the apartment. If the association of apartment owners is the
21 plaintiff, it may request that its managing agent be appointed as



1 receiver to collect the rent from the tenant. The managing agent
2 or board of directors, acting on behalf of the association of
3 apartment owners and in the name of the association of apartment
4 owners, unless prohibited by the declaration, may bid on the
5 apartment at foreclosure sale, and acquire and hold, lease,
6 mortgage, and convey the apartment. Action to recover a money
7 judgment for unpaid common expenses shall be maintainable without
8 foreclosing or waiving the lien securing the unpaid common
9 expenses owed.

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



1 be deemed to acquire title and shall be required to pay the
2 apartment's share of common expenses and 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 apartment shall not be deemed to acquire
13 title 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 who appears at the
17 hearing on the motion or a party to the foreclosure action
18 requests reconsideration of the motion or order to confirm sale,
19 objects to the form of the proposed order to confirm sale,
20 appeals the decision of the court to grant the motion to confirm
21 sale, or the debtor or mortgagor declares bankruptcy or is



1 involuntarily placed into bankruptcy. In any such case, the
2 mortgagee of record or other purchaser of the apartment shall be
3 deemed to acquire title upon recordation of the instrument of
4 conveyance.

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

10 (1) The amount of common expenses included in the
11 assessment, including the due date of each amount
12 claimed;

13 (2) The amount of any penalty~~[+]~~ or fine, late fee, lien
14 filing fee, and any other charge included in the
15 assessment~~[+]~~ that is not imposed on all apartment
16 owners as a common expense; and

17 (3) The amount of attorneys' fees and costs, if any,
18 included in the assessment~~[+]~~.

19 (d) No apartment owner shall withhold any common expense
20 assessment claimed by the association. An apartment owner who
21 received a demand for payment from an association and disputes



1 the amount of an assessment may request a written statement that
2 includes the information required to be indicated under
3 subsection (c) and additionally informs the apartment owner
4 that:

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

8 ~~[(5) That an]~~ (2) An apartment owner has a right to demand
9 mediation or arbitration to resolve disputes about the
10 amount or validity of an association's common expense
11 assessment; provided that the apartment owner
12 immediately pays the common expense assessment in full
13 and keeps common expense assessments current; ~~[and~~

14 ~~+(6) That payment]~~ (3) Payment in full of the common
15 expense assessment shall not prevent the owner from
16 contesting the common expense assessment or receiving
17 a refund of amounts not owed~~[-]~~; and

18 (4) An apartment owner may demand mediation as provided in
19 subsection (g) prior to paying any penalty or fine,
20 late fee, lien filing fee, or other charges included



1 in the assessment, except common expense assessments,
2 if the apartment owner contests those charges.

3 (e) Nothing in this section shall limit the rights of an
4 owner to the protection of all fair debt collection procedures
5 mandated under federal and state law.

6 ~~[(d)]~~ (f) An apartment owner who pays an association the
7 full amount of the common expenses claimed by the association
8 may file in small claims court or require the association to
9 mediate to resolve any disputes concerning the amount or
10 validity of the association's common expense claim. If the
11 apartment owner and the association are unable to resolve the
12 dispute through mediation, either party may file for arbitration
13 under part VII; provided that an apartment owner may only file
14 for arbitration if all amounts claimed by the association as
15 common expenses are paid in full on or before the date of
16 filing. If the apartment owner fails to keep all association
17 common expense assessments current during the arbitration, the
18 association may ask the arbitrator to temporarily suspend the
19 arbitration proceedings. If the apartment owner pays all
20 association common expense assessments within thirty days of the
21 date of suspension, the apartment owner may ask the arbitrator



1 to recommence the arbitration proceedings. If the owner fails
2 to pay all association common expense assessments by the end of
3 the thirty-day period, the association may ask the arbitrator to
4 dismiss the arbitration proceedings. The apartment owner shall
5 be entitled to a refund of any amounts paid to the association
6 as common expenses which are not owed.

7 (g) An apartment owner who contests the amount of any
8 legal fees, penalties or fines, late fees, lien filing fees, or
9 any other charges, except common expense assessments, may demand
10 mediation on the validity of those other charges. If the
11 apartment owner contests any legal fees, penalties or fines,
12 late fees, lien filing fees, or any other charges, except common
13 expenses, the written statement pursuant to subsection (d) shall
14 also state that:

15 (1) The apartment owner has thirty days from the date of
16 the written statement to file demand for mediation on
17 the disputed charges, other than common expense
18 assessments;

19 (2) If the apartment owner fails to file for mediation
20 within thirty days of the date of the notice, the



1 association may proceed with collection of the other
2 charges;

3 (3) If the apartment owner makes a request for mediation
4 within thirty days, the association shall be
5 prohibited from attempting to collect any of the
6 disputed charges until the association has
7 participated in the mediation; and

8 (4) The mediation shall be completed within sixty days of
9 the apartment owner's request for mediation; provided
10 that if the mediation is not completed within sixty
11 days or the parties are unable to resolve the dispute
12 by mediation, the association may proceed with
13 collection of all amounts due from the owner for legal
14 fees, penalties or fines, late fees, lien filing fees,
15 or any other charge that is not imposed on all
16 apartment owners as a common expense.

17 ~~[(e)]~~ (h) As an alternative to foreclosure proceedings under
18 subsection (a), where an apartment is owner-occupied, the
19 association of apartment owners may authorize its managing agent
20 or board of directors to, after sixty days' written notice to the
21 apartment owner and to the apartment's first mortgagee of the



1 nonpayment of the apartment's share of the common expenses,
2 terminate the delinquent apartment's access to the common elements
3 and cease supplying a delinquent apartment with any and all
4 services normally supplied or paid for by the association of
5 apartment owners. Any terminated services and privileges shall be
6 restored upon payment of all delinquent assessments.

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

13 ~~[(g)]~~ (j) Subject to this subsection, and subsections
14 ~~[(h)]~~ (k) and ~~[(i)],~~ (l), the board of an association of
15 apartment owners may specially assess the amount of the unpaid
16 regular monthly common assessments for common area expenses
17 against a person who, in a judicial or nonjudicial power of sale
18 foreclosure, purchases a delinquent apartment; provided that:

19 (1) A purchaser who holds a mortgage on a delinquent
20 apartment that was recorded prior to the filing of a
21 notice of lien by the association of apartment owners



1 and who acquires the delinquent apartment through a
2 judicial or nonjudicial foreclosure proceeding,
3 including purchasing the delinquent apartment at a
4 foreclosure auction, shall not be obligated to make,
5 nor be liable for, payment of the special assessment
6 as provided for under this subsection; and

7 (2) A person who subsequently purchases the delinquent
8 apartment from the mortgagee referred to in paragraph
9 (1) shall be obligated to make, and shall be liable
10 for, payment of the special assessment provided for
11 under this subsection; provided that the mortgagee or
12 subsequent purchaser may require the association of
13 apartment owners to provide at no charge a notice of
14 the association's intent to claim a lien against the
15 delinquent apartment for the amount of the special
16 assessment, prior to the subsequent purchaser's
17 acquisition of title to the delinquent apartment. The
18 notice shall state the amount of the special
19 assessment, how that amount was calculated, and the
20 legal description of the apartment.



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

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

8 "Completion" means:

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

12 (2) In a judicial foreclosure, when a purchaser is
13 deemed to acquire title pursuant to subsection
14 (b) .

15 "Regular monthly common assessments" shall not include:

16 (1) Any other special assessment, except for a special
17 assessment imposed on all apartments as part of a
18 budget adopted pursuant to section 514A-83.6;

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

20 (3) Interest assessed by the association of apartment
21 owners;



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

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

SECTION 4. Section 514B-105, Hawaii Revised Statutes, is amended to read as follows:

"§514B-105 Association; limitations on powers. (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or



1 (3) Restrict the leasing of residential units to the
2 extent those rules are reasonably designed to meet
3 underwriting requirements of institutional lenders who
4 regularly lend money secured by first mortgages on
5 units in condominiums or regularly purchase those
6 mortgages.

7 Otherwise, the association may not regulate any use of or
8 behavior in units by means of the rules and regulations.

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

15 ~~(1) Failure to pay late fees, legal fees, fines, and~~
16 ~~interest may result in the deduction of such late~~
17 ~~fees, legal fees, fines, and interest from future~~
18 ~~common expense payments, so long as a delinquency~~
19 ~~continues to exist, and~~

20 ~~(2) Late fees may be imposed against any future common~~
21 ~~expense payment that is less than the full amount owed~~



~~due to the deduction of unpaid late fees, legal fees,
fines, and interest from the payment.~~

~~(d)]~~ (c) No unit owner who requests legal or other information from the association, the board, the managing agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

~~[(e)]~~ (d) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the



1 association may authorize the board to borrow money for the
2 repair, replacement, maintenance, operation, or administration
3 of the common elements and personal property of the project, or
4 the making of any additions, alterations, and improvements
5 thereto; provided that written notice of the purpose and use of
6 the funds is first sent to all unit owners and owners
7 representing fifty per cent of the common interest vote or give
8 written consent to the borrowing. In connection with the
9 borrowing, the board may grant to the lender the right to assess
10 and collect monthly or special assessments from the unit owners
11 and to enforce the payment of the assessments or other sums by
12 statutory lien and foreclosure proceedings. The cost of the
13 borrowing, including, without limitation, all principal,
14 interest, commitment fees, and other expenses payable with
15 respect to the borrowing or the enforcement of the obligations
16 under the borrowing, shall be a common expense of the project.
17 For purposes of this section, the financing of insurance
18 premiums by the association within the policy period shall not
19 be deemed a loan and no lease shall be deemed a loan if it
20 provides that at the end of the lease the association may
21 purchase the leased equipment for its fair market value."



SECTION 5. Section 514B-146, Hawaii Revised Statutes, is amended to read as follows:

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

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

(2) Except as provided in subsection ~~[(g),]~~ (j), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages; provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the



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

11 The lien of the association may be foreclosed by action or
12 by nonjudicial or power of sale foreclosure procedures set forth
13 in chapter 667, by the managing agent or board, acting on behalf
14 of the association and in the name of the association; provided
15 that no association may exercise the nonjudicial or power of
16 sale remedies provided in chapter 667 to foreclose a lien
17 against any unit that arises solely from fines, penalties, legal
18 fees, or late fees, and the foreclosure of any such lien shall
19 be filed in court pursuant to part IA of chapter 667.

20 In any such foreclosure, the unit owner shall be required
21 to pay a reasonable rental for the unit, if so provided in the



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

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



1 from all of the unit owners, including the acquirer and the
2 acquirer's successors and assigns. The mortgagee of record or
3 other purchaser of the unit shall be deemed to acquire title and
4 shall be required to pay the unit's share of common expenses and
5 assessments beginning:

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

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

10 (3) Thirty days after the public sale in a nonjudicial
11 power of sale foreclosure conducted pursuant to
12 chapter 667; or

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



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

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

12 (1) The amount of common expenses included in the
13 assessment, including the due date of each amount
14 claimed;

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

19 (3) The amount of attorneys' fees and costs, if any,
20 included in the assessment~~[+]~~.



1 (d) No unit owner shall withhold any common expense
2 assessment claimed by the association. A unit owner who
3 received a demand for payment from an association and disputes
4 the amount of an assessment may request a written statement that
5 includes the information required to be indicated under
6 subsection (c) and additionally informs the unit owner that:

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

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

16 [~~(6)~~ ~~That payment~~] (3) Payment in full of the common
17 expense assessment [~~does~~] shall not prevent the owner
18 from contesting the common expense assessment or
19 receiving a refund of amounts not owed~~[,]~~; and

20 (4) The unit owner may demand mediation as provided in
21 subsection (g) prior to paying any penalty or fine,



1 late fee, lien filing fee, or other charges included
2 in the assessment, except common expense assessments,
3 if the unit owner contests those charges.

4 (e) Nothing in this section shall limit the rights of an
5 owner to the protection of all fair debt collection procedures
6 mandated under federal and state law.

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



1 the arbitrator to recommence the arbitration proceedings. If
2 the owner fails to pay all association common expense
3 assessments by the end of the thirty-day period, the association
4 may ask the arbitrator to dismiss the arbitration proceedings.
5 The unit owner shall be entitled to a refund of any amounts paid
6 as common expenses to the association which are not owed.

7 (g) A unit owner who contests the amount of any legal
8 fees, penalties or fines, late fees, lien filing fees, or any
9 other charges, except common expense assessments, may demand
10 mediation on the validity of those other charges. If the unit
11 owner contests any legal fees, penalties or fines, late fees,
12 lien filing fees, or any other charges, except common expenses,
13 the written statement pursuant to subsection (d) shall also
14 state that:

15 (1) The unit owner has thirty days from the date of the
16 written statement to file demand for mediation on the
17 disputed charges, other than common expense
18 assessments;

19 (2) If the unit owner fails to file for mediation within
20 thirty days of the date of the notice, the association
21 may proceed with collection of the other charges;



1 (3) If the unit owner makes a request for mediation within
2 thirty days, the association shall be prohibited from
3 attempting to collect any of the disputed charges
4 until the association has participated in the
5 mediation; and

6 (4) The mediation shall be completed within sixty days of
7 the unit owner's request for mediation; provided that
8 if the mediation is not completed within sixty days or
9 the parties are unable to resolve the dispute by
10 mediation, the association may proceed with collection
11 of all amounts due from the owner for legal fees,
12 penalties or fines, late fees, lien filing fees, or
13 any other charge that is not imposed on all unit
14 owners as a common expense.

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



1 delinquent unit with any and all services normally supplied or
2 paid for by the association. Any terminated services and
3 privileges shall be restored upon payment of all delinquent
4 assessments but need not be restored until payment in full is
5 received.

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

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



1 unit. The notice shall state the amount of the special
2 assessment, how that amount was calculated, and the legal
3 description of the unit.

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

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

12 "Completion" means:

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

18 "Regular monthly common assessments" does not include:

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



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

7 ~~[(+j)]~~ (m) The cost of a release of any lien filed pursuant
 8 to this section shall be paid by the party requesting the
 9 release.

10 ~~[(+k)]~~ (n) After any judicial or nonjudicial foreclosure
 11 proceeding in which the association acquires title to the unit,
 12 any excess rental income received by the association from the
 13 unit shall be paid to existing lien holders based on the
 14 priority of lien, and not on a pro rata basis, and shall be
 15 applied to the benefit of the unit owner. For purposes of this
 16 subsection, excess rental income shall be any net income
 17 received by the association after a court has issued a final
 18 judgment determining the priority of a senior mortgagee and
 19 after paying, crediting, or reimbursing the association or a
 20 third party for:



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

13 provided that the lien for delinquent assessments under
14 paragraph (1) shall be paid, credited, or reimbursed first."

15 SECTION 6. Section 514A-15.1, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§514A-15.1] Common expenses; prior late charges. No~~
18 ~~association of apartment owners shall deduct and apply portions~~
19 ~~of common expense payments received from an apartment owner to~~
20 ~~unpaid late fees (other than amounts remitted by an apartment~~
21 ~~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 **PART IV**

11 SECTION 7. Section 514A-121, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Nothing in subsection (a) shall be interpreted to
14 mandate the arbitration of any dispute involving:

- 15 (1) The real estate commission;
16 (2) The mortgagee of a mortgage of record;
17 (3) The developer, general contractor, subcontractors, or
18 design professionals for the project; provided that
19 when any person exempted by this paragraph is also an
20 apartment owner, a director, or managing agent, such



1 person shall, in those capacities, be subject to the
2 provisions of subsection (a);

3 (4) Actions seeking equitable relief involving threatened
4 property damage or the health or safety of apartment
5 owners or any other person;

6 (5) Actions to collect assessments that are liens or
7 subject to foreclosure; provided that an apartment
8 owner who pays the full amount of an assessment and
9 fulfills the requirements of section [~~514A-90(d)~~]
10 514A-90(f) shall have the right to demand arbitration
11 of the owner's dispute, including a dispute about the
12 amount and validity of the assessment;

13 (6) Personal injury claims;

14 (7) Actions for amounts in excess of \$2,500 against an
15 association of apartment owners, a board of directors,
16 or one or more directors, officers, agents, employees,
17 or other persons, if insurance coverage under a policy
18 or policies procured by the association of apartment
19 owners or its board of directors would be unavailable
20 because action by arbitration was pursued; or



(8) Any other cases which are determined, as provided in section 514A-122, to be unsuitable for disposition by arbitration."

SECTION 8. Section 514B-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

(1) Adopt and amend the declaration, bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;

(3) Hire and discharge managing agents and other independent contractors, agents, and employees;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of



actions under chapter 480, associations shall be
deemed to be "consumers";

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement,
and modification of common elements;

(7) Cause additional improvements to be made as a part of
the common elements;

(8) Acquire, hold, encumber, and convey in its own name
any right, title, or interest to real or personal
property; provided that:

(A) Designation of additional areas to be common
elements or subject to common expenses after the
initial filing of the declaration or bylaws shall
require the approval of at least sixty-seven per
cent of the unit owners;

(B) If the developer discloses to the initial buyer
in writing that additional areas will be
designated as common elements whether pursuant to
an incremental or phased project or otherwise,
the requirements of this paragraph shall not
apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not
2 apply to the purchase of a unit for a resident
3 manager, which may be purchased with the approval
4 of the board;

5 (9) Subject to section 514B-38, grant easements, leases,
6 licenses, and concessions through or over the common
7 elements and permit encroachments on the common
8 elements;

9 (10) Impose and receive any payments, fees, or charges for
10 the use, rental, or operation of the common elements,
11 other than limited common elements described in
12 section 514B-35(2) and (4), and for services provided
13 to unit owners;

14 (11) Impose charges and penalties, including late fees and
15 interest, for late payment of assessments and levy
16 reasonable fines for violations of the declaration,
17 bylaws, rules, and regulations of the association,
18 either in accordance with the bylaws or, if the bylaws
19 are silent, pursuant to a resolution adopted by the
20 board that establishes a fining procedure that states
21 the basis for the fine and allows an appeal to the



1 board of the fine with notice and an opportunity to be
2 heard and providing that if the fine is paid, the unit
3 owner shall have the right to initiate a dispute
4 resolution process as provided by sections 514B-161,
5 514B-162, or by filing a request for an administrative
6 hearing under a pilot program administered by the
7 department of commerce and consumer affairs;

8 (12) Impose reasonable charges for the preparation and
9 recordation of amendments to the declaration,
10 documents requested for resale of units, or statements
11 of unpaid assessments;

12 (13) Provide for cumulative voting through a provision in
13 the bylaws;

14 (14) Provide for the indemnification of its officers,
15 board, committee members, and agents, and maintain
16 directors' and officers' liability insurance;

17 (15) Assign its right to future income, including the right
18 to receive common expense assessments, but only to the
19 extent section ~~[514B-105(e)]~~ 514B-105(d) expressly so
20 provides;



1 (16) Exercise any other powers conferred by the declaration
2 or bylaws;

3 (17) Exercise all other powers that may be exercised in
4 this State by legal entities of the same type as the
5 association, except to the extent inconsistent with
6 this chapter;

7 (18) Exercise any other powers necessary and proper for the
8 governance and operation of the association; and

9 (19) By regulation, subject to sections 514B-146, 514B-161,
10 and 514B-162, require that disputes between the board
11 and unit owners or between two or more unit owners
12 regarding the condominium be submitted to nonbinding
13 alternative dispute resolution in the manner described
14 in the regulation as a prerequisite to commencement of
15 a judicial proceeding."

16 SECTION 9. Section 514B-154, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The association's most current financial statement
19 shall be provided to any interested unit owner at no cost or on
20 twenty-four-hour loan, at a convenient location designated by



1 the board. The meeting minutes of the board of directors, once
2 approved, for the current and prior year shall either:

3 (1) Be available for examination by apartment owners at no
4 cost or on twenty-four-hour loan at a convenient
5 location at the project, to be determined by the board
6 of directors; or

7 (2) Be transmitted to any apartment owner making a request
8 for the minutes, by the board of directors, the
9 managing agent, or the association's representative,
10 within fifteen days of receipt of the request;
11 provided that the minutes shall be transmitted by
12 mail, electronic mail transmission, or facsimile, by
13 the means indicated by the owner, if the owner
14 indicated a preference at the time of the request; and
15 provided further that the owner shall pay a reasonable
16 fee for administrative costs associated with handling
17 the request.

18 Costs incurred by apartment owners pursuant to this subsection
19 shall be subject to section [~~514B-105(d)~~]. 514B-105(c)."



SECTION 10. Section 514B-154.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:

(1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;

(2) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;

(3) Detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and



1 repair expenses of the common elements and any other
2 expenses incurred and monthly statements indicating
3 the total current delinquent dollar amount of any
4 unpaid assessments for common expenses;

5 (4) All records and the vouchers authorizing the payments
6 and statements kept and maintained at the address of
7 the project, or elsewhere within the State as
8 determined by the board, subject to section 514B-152;

9 (5) All signed and executed agreements for managing the
10 operation of the property, expressing the agreement of
11 all parties, including but not limited to financial
12 and accounting obligations, services provided, and any
13 compensation arrangements, including any subsequent
14 amendments;

15 (6) An accurate and current list of members of the
16 condominium association and the members' current
17 addresses and the names and addresses of the vendees
18 under an agreement of sale, if any. A copy of the
19 list shall be available, at cost, to any unit owner or
20 owner's authorized agent who furnishes to the managing



agent, resident manager, or the board a duly executed and acknowledged affidavit stating that the list:

(A) Shall be used by the unit owner or owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters; and

(B) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;

(7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;

(8) Meeting minutes of the association, pursuant to section 514B-122;

(9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:

(A) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or



1 (B) Transmitted to any unit owner or owner's
2 authorized agent making a request for the minutes
3 within fifteen days of receipt of the request by
4 the owner or owner's authorized agent; provided
5 that:

6 (i) The minutes shall be transmitted by mail,
7 electronic mail transmission, or facsimile,
8 by the means indicated by the owner or
9 owner's authorized agent, if the owner or
10 owner's authorized agent indicated a
11 preference at the time of the request; and

12 (ii) The owner or owner's authorized agent shall
13 pay a reasonable fee for administrative
14 costs associated with handling the request,
15 subject to section [~~514B-105(d);~~]

16 514B-105(c);

17 (10) Financial statements, general ledgers, the accounts
18 receivable ledger, accounts payable ledgers, check
19 ledgers, insurance policies, contracts, and invoices
20 of the association for the duration those records are
21 kept by the association, and any documents regarding



1 delinquencies of ninety days or more shall be
2 available for examination by unit owners or owners'
3 authorized agents at convenient hours at a place
4 designated by the board; provided that:

5 (A) The board may require unit owners or owners'
6 authorized agents to furnish to the association a
7 duly executed and acknowledged affidavit stating
8 that the information is requested in good faith
9 for the protection of the interests of the
10 association, its members, or both; and

11 (B) Unit owners or owners' authorized agents shall
12 pay for administrative costs in excess of eight
13 hours per year;

14 (11) Proxies, tally sheets, ballots, unit owners' check-in
15 lists, and the certificate of election subject to
16 section 514B-154(c);

17 (12) Copies of an association's documents, records, and
18 information, whether maintained, kept, or required to
19 be provided pursuant to this section or section
20 514B-152, 514B-153, or 514B-154;



1 (13) A copy of the management contract from the entity that
2 manages the operation of the property before the
3 organization of an association; and

4 (14) Other documents requested by a unit owner or owner's
5 authorized agent in writing; provided that the board
6 shall give written authorization or written refusal
7 with an explanation of the refusal within thirty
8 calendar days of receipt of a request for documents
9 pursuant to this paragraph.

10 (b) Subject to section [~~514B-105(d),~~] 514B-105(c), copies
11 of the items in subsection (a) shall be provided to any unit
12 owner or owner's authorized agent upon the owner's or owner's
13 authorized agent's request; provided that the owner or owner's
14 authorized agent pays a reasonable fee for duplication, postage,
15 stationery, and other administrative costs associated with
16 handling the request."

17 **PART V**

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



1 SECTION 12. This Act shall take effect upon its approval.

2

INTRODUCED BY:

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Report Title:

Condominiums; Condominium Property Regimes; Association of Apartment Owners; Condominium Owners; Cure of Default; Disputed Charges; Mediation; Common Expense Assessments

Description:

Clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condo unit owner and association reach a payment plan to resolve a nonjudicial foreclosure. Establishes procedures providing condo 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.

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

