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# A BILL FOR AN ACT

RELATING TO ASSOCIATIONS.

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

SECTION 1. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§421J- Association attorneys; legal actions; communication with unit owners. Any attorney retained by an association, or board on behalf of an association, to pursue legal action against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, including legal action to:

(1) Collect delinquent assessments against an owner's unit;

(2) Foreclose any lien thereon; or

(3) Enforce any provision of the association documents or this chapter;

shall first communicate with the unit owner regarding the legal action, including information on the alleged violation. All communication regarding the alleged violation and legal action



1 shall be made directly with a unit owner, or if a unit owner has  
2 retained an attorney with the attorney representing the unit  
3 owner, and shall be in the form of written correspondence, fax  
4 transmittal, electronic mail, telephone communication, or in-  
5 person communication."

6 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 "§514B- Association attorneys; legal actions;  
10 communication with unit owners. Any attorney retained by an  
11 association, or board on behalf of an association, to pursue  
12 legal action against an owner, occupant, tenant, employee of an  
13 owner, or any other person who may in any manner use the  
14 property, including legal action to:

15 (1) Collect delinquent assessments against an owner's  
16 unit;

17 (2) Foreclose any lien thereon; or

18 (3) Enforce any provision of the declaration, bylaws,  
19 house rules, this chapter, or the rules of the real  
20 estate commission;



1 shall first communicate with the unit owner regarding the legal  
2 action, including information on the alleged violation. All  
3 communication regarding the alleged violation and legal action  
4 shall be made directly with a unit owner, or if a unit owner has  
5 retained an attorney with the attorney representing the unit  
6 owner, and shall be in the form of written correspondence, fax  
7 transmittal, electronic mail, telephone communication, or in-  
8 person communication."

9 SECTION 3. Section 421J-10.5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§421J-10.5 Association fiscal matters; lien for**  
12 **assessments.** (a) All sums assessed by the association, but  
13 unpaid for the share of the assessments chargeable to any unit,  
14 shall constitute a lien on the unit. The priority of the  
15 association's lien shall, except as otherwise provided by law,  
16 be as provided in the association documents or, if no priority  
17 is provided in the association documents, by the recordation  
18 date of the liens; provided that any amendment to the  
19 association documents that governs the priority of liens on the  
20 unit shall not provide that an association lien shall have  
21 priority over a mortgage lien that is recorded before the



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



1 foreclosure procedures set forth in chapter 667 to foreclose a  
2 lien against a unit unless specifically provided for in the  
3 purchase agreement between a unit owner and an association;  
4 provided further that no association may exercise the  
5 nonjudicial or power of sale remedies provided in chapter 667 to  
6 foreclose a lien against any unit that arises solely from fines,  
7 penalties, legal fees, or late fees, and the foreclosure of any  
8 such lien shall be filed in court pursuant to part IA of chapter  
9 667. In any association foreclosure, the unit owner shall be  
10 required to pay a reasonable rental for the unit, if so provided  
11 in the association documents or the law, and the plaintiff in  
12 the foreclosure shall be entitled to the appointment of a  
13 receiver to collect the rental owed by the unit owner or any  
14 tenant of the unit. If the association is the plaintiff, it may  
15 request that its managing agent be appointed as receiver to  
16 collect the rental from the tenant. The managing agent or  
17 board, acting on behalf of the association and in the name of  
18 the association, may bid on the unit at foreclosure sale and  
19 acquire and hold, lease, mortgage, and convey the unit  
20 thereafter as the board deems reasonable. Action to recover a  
21 money judgment for unpaid assessments shall be maintainable



1 without foreclosing or waiving the lien securing the unpaid  
2 assessments owed.

3 In the case of a voluntary conveyance, the grantee of a  
4 unit shall be jointly and severally liable with the grantor for  
5 all unpaid assessments against the latter for the grantor's  
6 share of the common expenses up to the time of the grant or  
7 conveyance, without prejudice to the grantee's right to recover  
8 from the grantor the amounts paid by the grantee. Any such  
9 grantor or grantee is entitled to a statement from the board,  
10 either directly or through its managing agent or resident  
11 manager, setting forth the amount of the unpaid assessments  
12 against the grantor. The grantee is not liable and the unit  
13 conveyed is not subject to a lien for any unpaid assessments  
14 against the grantor in excess of the amount set forth in the  
15 statement, except as to the amount of subsequently dishonored  
16 checks mentioned in the statement as having been received within  
17 the thirty-day period immediately preceding the date of such  
18 statement.

19 (b) Except as provided in subsection (g) or in the  
20 association documents, when the mortgagee of a mortgage of  
21 record or other purchaser of a unit obtains title to the unit as



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

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

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

15 (3) Thirty days after the public sale in a nonjudicial  
16 power of sale foreclosure conducted pursuant to  
17 chapter 667; or

18 (4) Upon the recording of the instrument of conveyance;

19 whichever occurs first; provided that the mortgagee of record or  
20 other purchaser of the unit shall not be deemed to acquire title  
21 under paragraph (1), (2), or (3), if transfer of title is



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

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

19 (1) The amount of regular and special assessments included  
20 in the assessment, including the due date of each  
21 amount claimed;





(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

(5) That a unit owner has a right to demand mediation to resolve disputes about the amount or validity of an association's assessment; provided that the unit owner immediately pays the assessment in full or enters into an installment payment agreement pursuant to subsection (i) and keeps assessments and installment payments current; and

(6) That payment in full of the assessment or payment of installment payments pursuant to subsection (i) does not prevent the unit owner from contesting the assessment or receiving a refund of amounts not owed.

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



1           (d) A unit owner who pays an association the full amount  
2   claimed by the association or who enters into an installment  
3   payment agreement pursuant to subsection (i) and keeps  
4   installment payments current may file a claim against the  
5   association in court, including small claims court, or require  
6   the association to mediate under section 421J-13 to resolve any  
7   disputes concerning the amount or validity of the association's  
8   claim. If the unit owner and the association are unable to  
9   resolve the dispute through mediation, either party may file for  
10   relief with a court; provided that a unit owner may only file  
11   for relief in court if all amounts claimed by the association  
12   are paid in full on or before the date of filing[-] or if all  
13   payments under an installment payment agreement pursuant to  
14   subsection (i) are current as of the date of filing. If the  
15   unit owner fails to keep all association assessments or  
16   installment payments current during the court hearing, the  
17   association may ask the court to temporarily suspend the  
18   proceedings. If the unit owner pays all association assessments  
19   or delinquent installment payments within thirty days of the  
20   date of suspension, the unit owner may ask the court to  
21   recommence the proceedings. If the unit owner fails to pay all



1 association assessments or delinquent installment payments by  
2 the end of the thirty-day period, the association may ask the  
3 court to dismiss the proceedings. The unit owner shall be  
4 entitled to a refund of any amounts paid to the association that  
5 are not owed.

6 (e) In conjunction with or as an alternative to  
7 foreclosure proceedings under subsection (a), where a unit is  
8 owner-occupied, the association may authorize its managing agent  
9 or board, after sixty days written notice to the unit owner of  
10 the unit's share of the assessments, to terminate the delinquent  
11 unit's access to the common areas and cease supplying a  
12 delinquent unit with any and all services normally supplied or  
13 paid for by the association. Any terminated services and  
14 privileges shall be restored upon payment of all delinquent  
15 assessments~~[7]~~ or entry into an installment agreement pursuant  
16 to subsection (i) but need not be restored until payment in full  
17 is received~~[7]~~ or at least a specified percentage of installment  
18 payments required pursuant to an installment payment agreement  
19 is received.

20 (f) Before the board or managing agent may take the  
21 actions permitted under subsection (e), the board shall adopt a



1 written policy providing for such actions and have the policy  
2 approved by a majority vote of the unit owners, as provided in  
3 the association documents, who are present in person or by proxy  
4 or as otherwise permitted by the association documents, at an  
5 annual or special meeting of the association or by the written  
6 consent of a voting interest equal to a quorum of the unit  
7 owners unless the association documents already permit the  
8 process.

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

14 (1) A purchaser who holds a mortgage on a delinquent unit,  
15 which mortgage is not subordinate to the priority of  
16 lien by the association, and who acquires the  
17 delinquent unit through a judicial or nonjudicial  
18 foreclosure proceeding, including purchasing the  
19 delinquent unit at a foreclosure auction, shall not be  
20 obligated to make, nor be liable for, payment of the



1 special assessment as provided for under this  
2 subsection; and

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

17 (h) The amount of the special assessment assessed under  
18 subsection (g) shall not exceed the total amount of unpaid  
19 regular periodic assessments that were assessed during the six  
20 months immediately preceding the completion of the judicial or  
21 nonjudicial power of sale foreclosure.



1        (i) The board may enter into an agreement with a  
2 delinquent unit owner for installment payments of all sums due  
3 by the unit owner to the association including regular and  
4 special assessments, interest, late fees, penalties, and  
5 attorney's fees; provided that payments made through an  
6 installment payment agreement shall be assigned as follows:

7        (1) First, exclusively to the original principal amount of  
8 the assessments due to the association until the  
9 delinquent assessments are paid in full;

10       (2) Second, to any interest, late fees, or penalties  
11 incurred; and

12       (3) Third, to any attorney's fees, which shall not exceed  
13 twenty-five percent of the original principal amount  
14 of the delinquent assessment.

15       ~~[(i)]~~ (j) For purposes of subsections (g) and (h), the  
16 following definitions shall apply, unless the context requires  
17 otherwise:

18       "Completion" means:

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



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

"Regular periodic assessments" does not include:

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

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(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 421J-10.6, Hawaii Revised Statutes, is amended to read as follows:

"[~~4~~] §421J-10.6 [~~4~~] **Association fiscal matters; collection of unpaid assessments from tenants or rental agents.** (a) If a unit owner rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the regular assessments, the board, for as long as the default continues, may demand in writing and receive each month, or any other period of time for rental payment as provided in the lease, from



1 any tenant occupying the unit or rental agent renting the unit,  
2 an amount sufficient to pay all sums due from the unit owner to  
3 the association, including interest, if any, but the amount  
4 shall not exceed the tenant's rent due at the time of demand.  
5 The tenant's payment under this section shall discharge that  
6 amount of payment from the tenant's rent obligation, and any  
7 contractual provision to the contrary shall be void as a matter  
8 of law.

9 (b) Before taking any action under this section, the board  
10 shall give to the delinquent unit owner written notice of the  
11 board's intent to collect the rent owed. The notice shall:

- 12 (1) Be sent both by first-class and certified mail;  
13 (2) Set forth the exact amount the association claims is  
14 due and owing by the unit owner; and  
15 (3) Indicate the intent of the board to collect such  
16 amount from the rent, along with any other amounts  
17 that become due and remain unpaid.

18 (c) The unit owner shall not take any retaliatory action  
19 against the tenant for payments made under this section.

20 (d) The payment of any portion of the unit's share of  
21 regular assessments by the tenant pursuant to a written demand





1 by the board is a complete defense, to the extent of the amount  
2 demanded and paid by the tenant, in an action for nonpayment of  
3 rent brought by the unit owner against a tenant.

4 (e) The board may not demand payment from the tenant  
5 pursuant to this section if:

6 (1) A commissioner or receiver has been appointed to take  
7 charge of the unit pending a mortgage foreclosure;

8 (2) A mortgagee is in possession of the unit pending a  
9 mortgage foreclosure; or

10 (3) The tenant is served with a court order directing  
11 payment to a third party.

12 (f) The board may enter into an agreement with a  
13 delinquent unit owner for installment payments of all sums due  
14 by the unit owner to the association including regular and  
15 special assessments, interest, late fees, penalties, and  
16 attorney's fees; provided that payments made through an  
17 installment payment agreement shall be assigned as follows:

18 (1) First, exclusively to the original principal amount of  
19 the assessments due to the association until the  
20 delinquent assessments are paid in full;



1        (2) Second, to any interest, late fees, or penalties  
2                    incurred; and

3        (3) Third, to any attorney's fees, which shall not exceed  
4                    twenty-five percent of the original principal amount  
5                    of the delinquent assessment.

6        [~~(f)~~] (g) In the event of any conflict between this section  
7 and any provision of chapter 521, the conflict shall be resolved  
8 in favor of this section; provided that if the tenant is  
9 entitled to an offset of rent under chapter 521, the tenant may  
10 deduct the offset from the amount due to the association, up to  
11 the limits stated in chapter 521. Nothing herein precludes the  
12 unit owner or tenant from seeking equitable relief from a court  
13 of competent jurisdiction or seeking a judicial determination of  
14 the amount owed.

15        [~~(g)~~] (h) Before the board may take the actions permitted  
16 under subsection (a), the board shall adopt a written policy  
17 providing for the actions and have the policy approved by a  
18 majority vote of the unit owners, as provided in the association  
19 documents, who are present in person or by proxy or as otherwise  
20 permitted by the association documents, at an annual or special  
21 meeting of the association or by the written consent of a voting



1 interest equal to a quorum of the unit owners unless the  
2 association documents already permit the process."

3 SECTION 5. Section 514B-145, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§514B-145 Association fiscal matters; collection of  
6 unpaid assessments from tenants or rental agents. (a) If the  
7 owner of a unit rents or leases the unit and is in default for  
8 thirty days or more in the payment of the unit's share of the  
9 common expenses, the board, for as long as the default  
10 continues, may demand in writing and receive each month from any  
11 tenant occupying the unit or rental agent renting the unit, an  
12 amount sufficient to pay all sums due from the unit owner to the  
13 association, including interest, if any, but the amount shall  
14 not exceed the tenant's rent due each month. The tenant's  
15 payment under this section shall discharge that amount of  
16 payment from the tenant's rent obligation, and any contractual  
17 provision to the contrary shall be void as a matter of law.

18 (b) Before taking any action under this section, the board  
19 shall give to the delinquent unit owner written notice of its  
20 intent to collect the rent owed. The notice shall:

21 (1) Be sent both by first-class and certified mail;



(2) Set forth the exact amount the association claims is due and owing by the unit owner; and

(3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;

(2) A mortgagee is in possession pending a mortgage foreclosure; or

(3) The tenant is served with a court order directing payment to a third party.



1        (f) The board may enter into an agreement with a  
2 delinquent unit owner for installment payments for all sums due  
3 by the unit owner to the association including regular and  
4 special assessments, interest, late fees, penalties, and  
5 attorney's fees; provided that payments made through an  
6 installment payment agreement shall be assigned as follows:

7        (1) First, exclusively to the original principal amount of  
8 the assessments due to the association until the  
9 delinquent assessments are paid in full;

10       (2) Second, to any interest, late fees, or penalties  
11 incurred; and

12       (3) Third, to any attorney's fees, which shall not exceed  
13 twenty-five percent of the original principal amount  
14 of the delinquent assessment.

15       ~~[(+f)]~~ (g) In the event of any conflict between this section  
16 and any provision of chapter 521, the conflict shall be resolved  
17 in favor of this section; provided that if the tenant is  
18 entitled to an offset of rent under chapter 521, the tenant may  
19 deduct the offset from the amount due to the association, up to  
20 the limits stated in chapter 521. Nothing herein precludes the  
21 unit owner or tenant from seeking equitable relief from a court



1 of competent jurisdiction or seeking a judicial determination of  
2 the amount owed.

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

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

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

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

19 (2) Except as provided in subsection (g), all sums unpaid  
20 on any mortgage of record that was recorded prior to  
21 the recordation of a notice of a lien by the



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

19           The lien of the association may be foreclosed by action or  
20   by nonjudicial or power of sale foreclosure procedures set forth  
21   in chapter 667, by the managing agent or board, acting on behalf



1 of the association and in the name of the association; provided  
2 that no association shall exercise nonjudicial or power of sale  
3 foreclosure procedures set forth in chapter 667 to foreclose a  
4 lien against a unit unless specifically provided for in the  
5 purchase agreement between a unit owner and an association;  
6 provided further that no association may exercise the  
7 nonjudicial or power of sale remedies provided in chapter 667 to  
8 foreclose a lien against any unit that arises solely from fines,  
9 penalties, legal fees, or late fees, and the foreclosure of any  
10 such lien shall be filed in court pursuant to part IA of chapter  
11 667.

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





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

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



1 (c) No unit owner shall withhold any assessment claimed by  
2 the association. A unit owner who disputes the amount of an  
3 assessment may request a written statement clearly indicating:

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

7 (2) The amount of any penalty, late fee, lien filing fee,  
8 and any other charge included in the assessment;

9 (3) The amount of attorneys' fees and costs, if any,  
10 included in the assessment;

11 (4) That under Hawaii law, a unit owner has no right to  
12 withhold assessments for any reason;

13 (5) That a unit owner has a right to demand mediation or  
14 arbitration to resolve disputes about the amount or  
15 validity of an association's assessment, provided the  
16 unit owner immediately pays the assessment in full or  
17 enters into an installment payment agreement pursuant  
18 to subsection (1) and keeps assessments and  
19 installment payments current; and

20 (6) That payment in full of the assessment or payment of  
21 installment payments pursuant to subsection (1) does



1 not prevent the owner from contesting the assessment  
2 or receiving a refund of amounts not owed.

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

6 (d) A unit owner who pays an association the full amount  
7 claimed by the association or who enters into an installment  
8 payment agreement pursuant to subsection (1) and keeps

9 installment payments current may file in small claims court or  
10 require the association to mediate to resolve any disputes  
11 concerning the amount or validity of the association's claim.

12 If the unit owner and the association are unable to resolve the  
13 dispute through mediation, either party may file for arbitration  
14 under section 514B-162; provided that a unit owner may only file  
15 for arbitration if all amounts claimed by the association are  
16 paid in full on or before the date of filing[-] or if all

17 payments under an installment payment agreement pursuant to  
18 subsection (1) are current as of the date of filing. If the

19 unit owner fails to keep all association assessments or  
20 installment payments current during the arbitration, the

21 association may ask the arbitrator to temporarily suspend the



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

10 (e) In conjunction with or as an alternative to  
11 foreclosure proceedings under subsection (a), where a unit is  
12 owner-occupied, the association may authorize its managing agent  
13 or board to, after sixty days' written notice to the unit owner  
14 and to the unit's first mortgagee of the nonpayment of the  
15 unit's share of the common expenses, terminate the delinquent  
16 unit's access to the common elements and cease supplying a  
17 delinquent unit with any and all services normally supplied or  
18 paid for by the association. Any terminated services and  
19 privileges shall be restored upon payment of all delinquent  
20 assessments or entry into an installment payment agreement  
21 pursuant to subsection (1) but need not be restored until



1 payment in full is received[-] or at least a specified  
2 percentage of installment payments required pursuant to the  
3 installment payment agreement is received.

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

10 (g) Subject to this subsection, and subsections (h) and  
11 (i), the board may specially assess the amount of the unpaid  
12 regular monthly common assessments for common expenses against a  
13 mortgagee or other purchaser who, in a judicial or nonjudicial  
14 power of sale foreclosure, purchases a delinquent unit; provided  
15 that the mortgagee or other purchaser may require the  
16 association to provide at no charge a notice of the  
17 association's intent to claim lien against the delinquent unit  
18 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) The amount of the special assessment assessed under  
4 subsection (g) shall not exceed the total amount of unpaid  
5 regular monthly common assessments that were assessed during the  
6 six months immediately preceding the completion of the judicial  
7 or nonjudicial power of sale foreclosure.

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

10 "Completion" means:

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

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

16 "Regular monthly common assessments" does not include:

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

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

21 (3) Interest assessed by the association;



(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.

(j) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

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

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

(2) Any maintenance fee delinquency against the unit;





1           (3) Attorney's fees and other collection costs related to  
2           the association's foreclosure of the unit; or

3           (4) Any costs incurred by the association for the rental,  
4           repair, maintenance, or rehabilitation of the unit  
5           while the association is in possession of the unit  
6           including monthly association maintenance fees,  
7           management fees, real estate commissions, cleaning and  
8           repair expenses for the unit, and general excise taxes  
9           paid on rental income;

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

12          (1) The board may enter into an agreement with a  
13          delinquent unit owner for installment payments of all sums due  
14          by the unit owner to the association including regular and  
15          special assessments, interest, late fees, penalties, and  
16          attorney's fees; provided that payments made through an  
17          installment payment agreement shall be assigned as follows:

18          (1) First, exclusively to the original principal amount of  
19          the assessments due to the association until the  
20          delinquent assessments are paid in full;



(2) Second, to any interest, late fees, or penalties incurred; and

(3) Third, to any attorney's fees, which shall not exceed twenty-five percent of the original principal amount of the delinquent assessment."

SECTION 7. Section 514B-157, Hawaii Revised Statutes, is amended to read as follows:

"[~~f~~] §514B-157 [~~f~~] **Attorneys' fees, delinquent assessments, and expenses of enforcement.** (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

(1) Collecting any delinquent assessments against any owner's unit;

(2) Foreclosing any lien thereon; or

(3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association



1 takes any action are not substantiated, all costs and expenses,  
2 including reasonable attorneys' fees, incurred by any such  
3 person or persons as a result of the action of the association,  
4 shall be promptly paid on demand to such person or persons by  
5 the association.

6 (b) If any claim by an owner is substantiated in any  
7 action against an association, any of its officers or directors,  
8 or its board to enforce any provision of the declaration,  
9 bylaws, house rules, or this chapter, then all reasonable and  
10 necessary expenses, costs, and attorneys' fees incurred by an  
11 owner shall be awarded to such owner; provided that no such  
12 award shall be made in any derivative action unless:

13 (1) The owner first shall have demanded and allowed  
14 reasonable time for the board to pursue such  
15 enforcement; or

16 (2) The owner demonstrates to the satisfaction of the  
17 court that a demand for enforcement made to the board  
18 would have been fruitless.

19 If any claim by an owner is not substantiated in any court  
20 action against an association, any of its officers or directors,  
21 or its board to enforce any provision of the declaration,



1 bylaws, house rules, or this chapter, then all reasonable and  
2 necessary expenses, costs, and attorneys' fees incurred by an  
3 association shall be awarded to the association, unless before  
4 filing the action in court the owner has first submitted the  
5 claim to mediation, or to arbitration under subpart D, and made  
6 a good faith effort to resolve the dispute under any of those  
7 procedures.

8 (c) Upon request by a unit owner, the association shall  
9 provide a clear cost breakdown of all attorneys' fees incurred  
10 by the association for any legal action taken by or on behalf of  
11 the association, including the attorney's hourly rate and the  
12 amount of time the attorney spent on the action, or, if the fee  
13 is not based on an hourly rate, the amount of the agreed upon  
14 fee."

15 SECTION 8. Section 607-14, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§607-14 Attorneys' fees in actions in the nature of**  
18 **assumpsit, etc.** In all the courts, in all actions in the nature  
19 of assumpsit and in all actions on a promissory note or other  
20 contract in writing that provides for an attorney's fee, there  
21 shall be taxed as attorneys' fees, to be paid by the losing



1 party and to be included in the sum for which execution may  
2 issue, a fee that the court determines to be reasonable;  
3 provided that the attorney representing the prevailing party  
4 shall submit to the court an affidavit stating the amount of  
5 time the attorney spent on the action and the amount of time the  
6 attorney is likely to spend to obtain a final written judgment,  
7 or, if the fee is not based on an hourly rate, the amount of the  
8 agreed upon fee. The court shall then tax attorneys' fees,  
9 which the court determines to be reasonable, to be paid by the  
10 losing party; provided that this amount shall not exceed twenty-  
11 five per cent of the judgment.

12 Where the note or other contract in writing provides for a  
13 fee of twenty-five per cent or more, or provides for a  
14 reasonable attorney's fee, not more than twenty-five per cent  
15 shall be allowed.

16 Where the note or other contract in writing provides for a  
17 rate less than twenty-five per cent, not more than the specified  
18 rate shall be allowed.

19 Where the note or other contract in writing provides for  
20 the recovery of attorneys' fees incurred in connection with a  
21 prior debt, those attorneys' fees shall not be allowed in the



1 immediate action unless there was a writing authorizing those  
2 attorneys' fees before the prior debt was incurred. "Prior  
3 debt" for the purposes of this section is the principal amount  
4 of a debt not included in the immediate action.

5 The above fees provided for by this section shall be  
6 assessed on the amount of the judgment exclusive of costs and  
7 all attorneys' fees obtained by the plaintiff, and upon the  
8 amount sued for if the defendant obtains judgment.

9 ~~[Nothing in this section shall limit the]~~ The recovery of  
10 reasonable attorneys' fees and costs by an association as  
11 defined under section 514B-3 or a planned community association  
12 and its members in actions for the collection of delinquent  
13 assessments, the foreclosure of any lien, or the enforcement of  
14 any provision of the association's governing documents, ~~[or~~  
15 ~~affect any right of a prevailing party to recover attorneys'~~  
16 ~~fees in excess of]~~ shall not exceed twenty-five per cent of the  
17 judgment pursuant to any statute that specifically provides that  
18 a prevailing party may recover all of its reasonable attorneys'  
19 fees. "Planned community association" for the purposes of this  
20 section means a nonprofit homeowners or community association  
21 existing pursuant to covenants running with the land."



SECTION 9. Section 667-40, Hawaii Revised Statutes, is amended to read as follows:

"[+]§667-40[+] **Use of power of sale foreclosure in certain non-mortgage situations.** A power of sale foreclosure under this part may be used in certain non-mortgage situations where a law or a written document contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure[-]; provided that no association shall use a power of sale foreclosure under this part to foreclose a lien against a unit for failure to pay assessments under section 421J-10.5 or 514B-146 unless specifically provided for in the purchase agreement between a unit owner and an association. These laws or written documents are limited to those involving time share plans, condominium property regimes, and agreements of sale."

SECTION 10. Section 667-91, Hawaii Revised Statutes, is amended to read as follows:

"[+]§667-91[+] **Alternate power of sale process.** The power of sale process in this part is an alternative process for associations to the foreclosure by action in part IA and the foreclosure by power of sale in part II[-]; provided that the



1 power of sale process in this part shall not be used by an  
2 association to foreclose a lien against a unit for failure to  
3 pay assessments under section 421J-10.5 or 514B-146 unless  
4 specifically provided for in the purchase agreement between a  
5 unit owner and an association."

6 SECTION 11. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect on July 1, 2019.

9

INTRODUCED BY:



JAN 23 2018





**Report Title:**

Condominiums; Planned Communities; Associations; Delinquent Assessments; Legal Actions; Attorneys; Legal Fees; Foreclosure

**Description:**

Requires attorneys hired by an association in an action against a unit owner to communicate directly with the owner or owner's attorney. Prohibits nonjudicial foreclosure on liens, for unpaid assessments unless specified in the purchase agreement. Permits associations to offer delinquent owners a payment plan for unpaid assessments. Requires associations to provide a cost-breakdown of attorney's fees upon request of an owner.

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

