
A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

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



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

12 The lien of the association may be foreclosed by action or
13 by nonjudicial or power of sale foreclosure [~~procedures set~~
14 ~~forth in chapter 667,~~] by the managing agent or board, acting on
15 behalf of the association and in the name of the association[~~7~~].
16 Regardless of the presence or absence of power of sale language
17 in the association documents, the foregoing remedies may be
18 completed using procedures set forth in chapter 667; provided
19 that no association may exercise the nonjudicial or power of
20 sale remedies provided in [~~chapter 667~~] this section to
21 foreclose a lien against any unit that arises solely from fines,



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

18 In the case of a voluntary conveyance, the grantee of a
19 unit shall be jointly and severally liable with the grantor for
20 all unpaid assessments against the latter for the grantor's
21 share of the common expenses up to the time of the grant or



1 conveyance, without prejudice to the grantee's right to recover
2 from the grantor the amounts paid by the grantee. Any such
3 grantor or grantee is entitled to a statement from the board,
4 either directly or through its managing agent or resident
5 manager, setting forth the amount of the unpaid assessments
6 against the grantor. The grantee is not liable and the unit
7 conveyed is not subject to a lien for any unpaid assessments
8 against the grantor in excess of the amount set forth in the
9 statement, except as to the amount of subsequently dishonored
10 checks mentioned in the statement as having been received within
11 the thirty-day period immediately preceding the date of such
12 statement."

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect on July 1, 2050.



Report Title:

Planned Community Associations; Nonjudicial Foreclosure Remedy

Description:

Clarifies that a planned community association may exercise nonjudicial power of sale foreclosure remedies regardless of the presence or absence of power of sale language in the association documents. Takes effect on 7/1/2050. (SD1)

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