
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that unit owners,
2 tenants, and others who use condominium property are subject to
3 chapter 514B, Hawaii Revised Statutes, and to the declaration
4 and bylaws of the association pursuant to section 514B-112(a),
5 Hawaii Revised Statutes. Further, persons shall comply strictly
6 with the covenants, conditions, and restrictions set forth in
7 the declaration, bylaws, and house rules pursuant to section
8 514B-112(c), Hawaii Revised Statutes. The legislature intends
9 that condominium associations have adequate remedies to enforce
10 compliance and that persons subject to enforcement actions
11 receive due process. The remedies prescribed in this Act are
12 intended to ensure due process relating to the imposition of
13 fines and to clarify procedures for disputing other assessments.

14 Accordingly, the purpose of this Act is to establish
15 processes and requirements for associations to impose fines
16 against unit owners, tenants, and guests who use condominium
17 property for violations of the declaration, bylaws, or house



1 rules, and to prohibit associations from charging attorneys'
2 fees with respect to any fines that are not deemed collectable.

3 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is
4 amended by adding a new section to part VI to be appropriately
5 designated and to read as follows:

6 "§514B- Fines. (a) An association may impose a fine
7 for the violation of the declaration, bylaws, or house rules
8 adopted pursuant to this chapter, provided that the amount of
9 the fine shall be reasonable.

10 (b) Notice of the imposition of the fine shall include:

11 (1) A general description of the act or omission for which
12 the fine is imposed;

13 (2) Reference to one or more provisions of the
14 declaration, bylaws, or house rules violated by the
15 act or omission; and

16 (3) Notice of an appeal procedure that provides an
17 aggrieved person a reasonable opportunity to challenge
18 the fine and be heard by the board; provided that an
19 appeal shall be initiated within thirty days after
20 receipt of the notice.



1 (c) Subject to its jurisdictional limits, the small claims
2 division of the district court in the circuit where the
3 condominium is located may finally determine the validity and
4 the amount of a fine imposed pursuant to this section; provided
5 that the right to file a claim pursuant to this subsection shall
6 not accrue until the board submits a notice of its final
7 disposition of any properly initiated appeal; provided further
8 that any complaint brought pursuant to this subsection shall be
9 filed within thirty days after receipt of the board's notice of
10 its final disposition of the appeal.

11 (d) A fine shall be deemed collectable if:

12 (1) The time to initiate an appeal has expired and an
13 appeal has not been initiated;

14 (2) The fine has been upheld following a timely appeal and
15 a small claims court case has not been initiated; and

16 (3) Small claims court has not invalidated the fine within
17 ninety days after timely initiation of a small claims
18 court case.

19 (e) Notwithstanding section 514B-157, no attorneys' fees
20 shall be charged by an association against any unit owner or



1 tenant, with respect to a fine, before the fine is deemed
2 collectable.

3 (f) The imposition of a fine, and the determination of a
4 small claims court, if any, shall be without prejudice to the
5 exercise of any other remedy available to an association under
6 this chapter."

7 SECTION 3. Section 514B-104, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

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

14 (2) Adopt and amend budgets for revenues, expenditures,
15 and reserves and collect assessments for common
16 expenses from unit owners, subject to section
17 514B-148;

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

20 (4) Institute, defend, or intervene in litigation or
21 administrative proceedings in its own name on behalf



1 of itself or two or more unit owners on matters
2 affecting the condominium. For the purposes of
3 actions under chapter 480, associations shall be
4 deemed to be "consumers";

5 (5) Make contracts and incur liabilities;

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

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

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

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

18 (B) If the developer discloses to the initial buyer
19 in writing that additional areas will be
20 designated as common elements whether pursuant to
21 an incremental or phased project or otherwise,



- 1 the requirements of this paragraph shall not
2 apply as to those additional areas; and
- 3 (C) The requirements of this paragraph shall not
4 apply to the purchase of a unit for a resident
5 manager, which may be purchased with the approval
6 of the board;
- 7 (9) Subject to section 514B-38, grant easements, leases,
8 licenses, and concessions through or over the common
9 elements and permit encroachments on the common
10 elements;
- 11 (10) Impose and receive any payments, fees, or charges for
12 the use, rental, or operation of the common elements,
13 other than limited common elements described in
14 section 514B-35(2) and (4), and for services provided
15 to unit owners;
- 16 (11) Impose charges and penalties, including late fees and
17 interest, for late payment of assessments and levy
18 reasonable fines for violations of the declaration,
19 bylaws, rules, and regulations of the association,
20 ~~[either in accordance with the bylaws or, if the~~
21 ~~bylaws are silent, pursuant to a resolution adopted by~~



1 ~~the board that establishes a fining procedure that~~
 2 ~~states the basis for the fine and allows an appeal to~~
 3 ~~the board of the fine with notice and an opportunity~~
 4 ~~to be heard and providing that if the fine is paid,~~
 5 ~~the unit owner shall have the right to initiate a~~
 6 ~~dispute resolution process as provided by sections~~
 7 ~~514B-161, 514B-162, or by filing a request for an~~
 8 ~~administrative hearing under a pilot program~~
 9 ~~administered by the department of commerce and~~
 10 ~~consumer affairs,] in accordance with section 514B- ;~~

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

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

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



- 1 (15) Assign its right to future income, including the right
2 to receive common expense assessments, but only to the
3 extent section 514B-105(e) expressly so provides;
- 4 (16) Exercise any other powers conferred by the declaration
5 or bylaws;
- 6 (17) Exercise all other powers that may be exercised in
7 this State by legal entities of the same type as the
8 association, except to the extent inconsistent with
9 this chapter;
- 10 (18) Exercise any other powers necessary and proper for the
11 governance and operation of the association; and
- 12 (19) By regulation, subject to sections 514B-146, 514B-161,
13 and 514B-162, require that disputes between the board
14 and unit owners or between two or more unit owners
15 regarding the condominium be submitted to nonbinding
16 alternative dispute resolution in the manner described
17 in the regulation as a prerequisite to commencement of
18 a judicial proceeding."

19 SECTION 4. Section 514B-105, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) Any payments made by or on behalf of a unit owner
2 shall first be applied to outstanding common expenses that are
3 assessed to all unit owners in proportion to the common interest
4 appurtenant to their respective units, including commercial
5 property assessed financing assessment expenses incurred for
6 improvements financed pursuant to section 196-64.5. Only after
7 the outstanding common expenses have been paid in full may the
8 payments be applied to other charges owed to the association,
9 including assessed charges to the unit such as ground lease
10 rent, utility sub-metering, storage lockers, parking stalls,
11 boat slips, insurance deductibles, and cable. After these
12 charges are paid, other charges, including unpaid late fees,
13 legal fees, collectable fines, and interest, may be assessed in
14 accordance with an application of payment policy adopted by the
15 board; provided that if a unit owner has designated that any
16 payment is for a specific charge that is not a common expense as
17 described in this subsection, the payment may be applied in
18 accordance with the unit owner's designation even if common
19 expenses remain outstanding."

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



1 "§514B-146 Association fiscal matters; lien for
2 **assessments.** (a) All sums assessed by the association but
3 unpaid for the share of the common expenses chargeable to any
4 unit shall constitute a lien on the unit with priority over all
5 other liens, except:

6 (1) Liens for real property taxes and assessments lawfully
7 imposed by governmental authority against the unit;
8 and
9 (2) Except as provided in subsection (j), all sums unpaid
10 on any mortgage of record that was recorded before the
11 recordation of a notice of a lien by the association,
12 and costs and expenses including attorneys' fees
13 provided in the mortgages;

14 provided that a lien recorded by an association for unpaid
15 assessments shall expire six years from the date of recordation
16 unless proceedings to enforce the lien are instituted before the
17 expiration of the lien; provided further that the expiration of
18 a recorded lien shall in no way affect the association's
19 automatic lien that arises pursuant to this subsection or the
20 declaration or bylaws. Any proceedings to enforce an
21 association's lien for any assessment shall be instituted within



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

9 The lien of the association may be foreclosed by action or
10 by nonjudicial or power of sale foreclosure, regardless of the
11 presence or absence of power of sale language in an
12 association's governing documents, by the managing agent or
13 board, acting on behalf of the association and in the name of
14 the association; provided that no association may exercise the
15 nonjudicial or power of sale remedies provided in chapter 667 to
16 foreclose a lien against any unit that arises solely from fines,
17 penalties, legal fees, or late fees, and the foreclosure of the
18 lien shall be filed in court pursuant to part IA of chapter 667.

19 In any foreclosure described in this section, the unit
20 owner shall be required to pay a reasonable rent for the unit,
21 if so provided in the bylaws or the law, and the plaintiff in



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

13 (b) Except as provided in subsection (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~~] before the acquisition of title
20 to the unit by the acquirer. The unpaid share of common
21 expenses or assessments shall be deemed to be common expenses



1 collectible from all of the unit owners, including the acquirer
2 and the acquirer's successors and assigns. The mortgagee of
3 record or other purchaser of the unit shall be deemed to acquire
4 title and shall be required to pay the unit's share of common
5 expenses and 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) A unit owner who receives a demand for payment from
9 an association and disputes the amount of an assessment may
10 request a written statement clearly indicating:~~

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

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

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

20 ~~(d) A unit owner who disputes the information in the
21 written statement received from the association pursuant to~~



1 ~~subsection (c) may request a subsequent written statement that~~
2 ~~additionally informs the unit owner that:~~

3 ~~(1) Under Hawaii law, a unit owner has no right to~~
4 ~~withhold common expense assessments for any reason;~~

5 ~~(2) A unit owner has a right to demand mediation or~~
6 ~~arbitration to resolve disputes about the amount or~~
7 ~~validity of an association's common expense~~
8 ~~assessment; provided that the unit owner immediately~~
9 ~~pays the common expense assessment in full and keeps~~
10 ~~common expense assessments current;~~

11 ~~(3) Payment in full of the common expense assessment shall~~
12 ~~not prevent the owner from contesting the common~~
13 ~~expense assessment or receiving a refund of amounts~~
14 ~~not owed; and~~

15 ~~(4) If the unit owner contests any penalty or fine, late~~
16 ~~fee, lien filing fee, or other charges included in the~~
17 ~~assessment, except common expense assessments, the~~
18 ~~unit owner may demand mediation as provided in~~
19 ~~subsection (g) prior to paying those charges.~~

20 ~~(c) No unit owner shall withhold any common expense~~
21 ~~assessment claimed by the association. Nothing in this section~~



1 ~~shall limit the rights of an owner to the protection of all fair~~
2 ~~debt collection procedures mandated under federal and state law.~~

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



1 ~~The unit owner shall be entitled to a refund of any amounts paid~~
2 ~~as common expenses to the association that are not owed.~~

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



1 ~~owner for attorneys' fees and costs, penalties or fines, late~~
2 ~~fees, lien filing fees, or any other charge that is not imposed~~
3 ~~on all unit owners as a common expense.]~~

4 (c) A unit owner shall have no right to withhold common
5 expense assessments for any reason; provided that a unit owner
6 may dispute the obligation to pay a common expense assessment
7 after payment in full of the assessment.

8 (d) A unit owner may dispute other assessments, apart from
9 common expense assessments, before making payment. A unit owner
10 who disputes an assessment, other than a common expense
11 assessment, may request a written statement clearly detailing:

12 (1) The common expenses included in an assessment, and
13 stating the due date of each amount of common expense
14 assessed;

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

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



1 In responding to the request, the association shall include a
2 disclaimer that, under state law, a unit owner has no right to
3 withhold common expense assessments for any reason, but that the
4 obligation to pay a common expense assessment may be disputed
5 after the assessment is paid in full. The association shall
6 also include in the disclaimer that a unit owner may dispute
7 other assessments, apart from a common expense assessment,
8 before making payment, and that the rights to contest
9 assessments are as described in this section and the rights to
10 contest certain fines are described in section 514B- .

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

14 (f) A unit owner may file an action in any court with
15 jurisdiction, or may request mediation, to contest:

16 (1) A paid assessment; or

17 (2) An unpaid assessment other than a common expense
18 assessment or a fine. Fines shall be subject to
19 section 514B- .

20 A unit owner who elects to request mediation shall do so
21 within thirty days after the date of the statement described in



1 subsection (d). A timely demand for mediation shall stay an
2 association's effort to collect the contested assessment for
3 sixty days; provided that the stay shall not apply to an
4 association's right to record a lien to preserve its priority of
5 the lien. The unit owner shall be entitled to a refund of any
6 amounts paid that are determined to have not been owed.

7 (g) An association may defend an assessment in court and
8 in mediation. The association may proceed to collect an unpaid
9 assessment by any legal means, except when collection efforts
10 are stayed pursuant to subsection (f).

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



1 assessments but need not be restored until payment in full is
2 received.

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

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



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

6 (1) For purposes of subsections (j) and (k), the following
7 definitions shall apply, unless the context requires otherwise:

8 "Completion" means:

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

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

14 "Regular monthly common assessments" does not include:

15 (1) Any other special assessment, except for a special
16 assessment imposed on all units as part of a budget
17 adopted pursuant to section 514B-148, including
18 commercial property assessed financing assessments
19 imposed pursuant to section 196-64.5;

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

21 (3) Interest assessed by the association;



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

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

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

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

20 (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 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 2050.

15



Report Title:

Condominium Associations; Unit Owners; Tenants; Declarations;
By-Laws; House Rules; Violations; Fines; Appeals; Attorneys'
Fees

Description:

Establishes processes and requirements for associations to impose fines against unit owners, tenants, and guests for violations of the declaration, bylaws, or house rules. Prohibits associations from charging attorneys' fees with respect to any fines that are not deemed collectable. Effective 7/1/2050. (SD1)

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

