
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 condominiums are a
2 significant and valuable housing resource in the State,
3 especially with limited space available for new development.
4 The structure of condominium ownership requires each owner to
5 share in the total cost of maintaining common elements, such as
6 building exteriors, landscaping, and recreation rooms, in
7 addition to paying insurance premiums. All owners pay for such
8 maintenance through payment of their share of common expense
9 assessments.

10 The legislature further finds that it is crucial that
11 condominium associations are able to secure timely payment of
12 common expense assessments to provide services to all residents
13 of a condominium community.

14 The legislature notes that increasing delinquencies,
15 related enforcement expenses, and lengthy delays in the judicial
16 foreclosure process exacerbate the financial burden on
17 association owners.



1 The legislature further finds that associations are treated
2 differently from other parties that acquire title through
3 foreclosure, and that this treatment burdens association members
4 who pay their share of common expense assessments on time. In
5 particular, associations that have acquired title to a unit
6 through a judicial or nonjudicial foreclosure face additional
7 administrative and financial burdens of accounting for rental
8 income.

9 The legislature further notes that many associations do not
10 obtain "excess rental income" as defined by section 514B-146(n),
11 Hawaii Revised Statutes. However, in cases where another
12 lienholder is foreclosing on a unit acquired by an association,
13 associations with excess rental income are also unfairly
14 burdened by the requirement to disgorge "excess rental income"
15 received before the appointment of a commissioner in a
16 subsequent foreclosure.

17 Accordingly, the purpose of this Act is to clarify that
18 condominium associations that have acquired title through
19 foreclosure may retain rental income received before the
20 appointment of a commissioner, but the association may be
21 required by a court to remit rental income received after the



1 appointment of a commissioner to be held until an order of
2 distribution is entered by the court.

3 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
4 amended by amending subsection (n) to read as follows:

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

- 16 ~~(1) The lien for delinquent assessments pursuant to~~
17 ~~subsections (a) and (b);~~
- 18 ~~(2) Any maintenance fee delinquency against the unit;~~
- 19 ~~(3) Attorney's fees and other collection costs related to~~
20 ~~the association's foreclosure of the unit; or~~



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

8 ~~provided that the lien for delinquent assessments under~~
9 ~~paragraph (1) shall be paid, credited, or reimbursed first.]~~
10 used for the benefit of the association; provided that a court
11 may require that rental income received after the appointment of
12 a commissioner in a subsequent foreclosure of a lien against the
13 unit shall be remitted to the court-appointed commissioner to be
14 held until an order of distribution is entered by the court."

15 SECTION 3. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Condominiums; Associations; Rental Income; Foreclosures;
Third-Party Commissioners

Description:

Clarifies that condominium associations that have obtained title to a unit through foreclosure may retain rental income received prior to the appointment of a commissioner in a subsequent foreclosure, but the association may be required by a court to remit rental income received after the appointment of a commissioner to be held until an order of distribution is entered by the court. Effective 7/1/3000. (HD1)

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