

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 39, Session Laws of Hawaii 2000, took effect in April 2000 and authorized condominium associations to collect up to six months of maintenance fees or \$1,800, whichever was less, in connection with the foreclosure of a condominium apartment. Prior to Act 39, associations frequently received nothing from the sale of an apartment in foreclosure because all of the proceeds from the foreclosure auction would go to the holder of the first mortgage. The purpose of Act 39 was to allow condominium associations some recovery from the foreclosure of the condominium apartment, even if the holder of the first mortgage was not paid in full. The provision recognized that, since the association maintained and insured the condominium apartment and the project in which it was located, the association should recover something from the foreclosure of the apartment.

The “cap” or limit of \$1,800 on the association’s recovery was based on information that the average monthly maintenance fee in 2000 was \$300 per month. However, nine years later, the average monthly maintenance fee is now well over \$400 per month. Therefore, retaining the \$300 amount unfairly limits the association’s recovery in a foreclosure.

The purpose of this Act is to increase the cap on an association’s recovery to six months of maintenance fees or \$3,600, whichever is less. In this way, associations will continue to receive a fair share of the proceeds from the foreclosure auction of a condominium apartment, to compensate the association for its role in maintaining the value of the condominium apartment, before, during, and after the foreclosure.

SECTION 2. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (h) to read:

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~\$1,800~~] \$3,600.”

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

“(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of [~~\$1,800~~] \$3,600.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 20, 2009.)