

ACT 235

S.B. NO. 2483

A Bill for an Act Relating to Condominium Associations.

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

PART I

SECTION 1. The legislature finds that section 514B-146, Hawaii Revised Statutes, was amended during the regular session of 2013 to address, in part, the timing of the payment to a condominium association of the six-month special assessment for unpaid common expenses pursuant to section 514B-146(g) and (h), Hawaii Revised Statutes. However, the term "other purchaser" was inadvertently left out of the amended statute, and needs to be added back in to section 514B-146(g), Hawaii Revised Statutes, in order to clarify, correct, and mitigate disputes resulting from the absence of this term.

The legislature further finds that section 514B-146(a)(1), Hawaii Revised Statutes, provides, in part, that taxes take priority over a condominium association's assessments and related lien for such assessments. However, the term taxes referenced in section 514B-146(a)(1), Hawaii Revised Statutes, may have only been intended to include real property taxes, rather than all taxes owed by the unit owner.

The purpose of this part is to make housekeeping amendments to state condominium laws.

SECTION 2. Section 514B-146, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
“(a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:
 - (1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and

- (2) Except as provided in subsection (g), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages;

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed."

2. By amending subsection (g) to read:

"(g) Subject to this subsection, and subsections (h) and (i), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit."

PART II

SECTION 3. Section 514B-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium from the provisions of this chapter (section 514B-47), or to elect members of the board or determine the qualifications, powers and duties,

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or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section 514B-123) to elect members of the board; and provided further that notwithstanding anything to the contrary in the declaration or bylaws, the board may only fill vacancies in its membership to serve until the next annual or duly noticed special association meeting. Notice of a special association meeting to fill vacancies shall include notice of the election. Any special association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose."

PART III

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2014.

(Became law on July 8, 2014, without the governor's signature, pursuant to Art. III, §16, State Constitution.)