

ACT 65

H.B. NO. 2045

A Bill for an Act Relating to Planned Community Associations.

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

SECTION 1. The legislature finds that while planned community associations in Hawaii have the statutory lien against delinquent units for unpaid assessments under section 421J-10.5, Hawaii Revised Statutes, certain delinquent units have been sold without curing the assessment debt owed to the master associations in voluntary conveyances.

The legislature further finds that this problem could arise from the oversight of escrow officers in charge of closing when a master association has not recorded its lien in the bureau of conveyances or filed its lien in the land court. It could also be the result of sales transacted without escrow service, such as transfers to individual trusts, companies controlled by owners, or family members.

In these cases, planned community associations or master associations failed to receive proper notification of the sale and payment on delinquent association dues. When the prior owners move to the mainland or undergo financial hardship, it is very difficult for the planned community associations or master associations to collect their debts.

The purpose of this Act is to provide a legislative remedy for community associations to be able to hold individuals liable for unpaid assessments for their share of the common expenses up to the time of a grant or conveyance of property, which is similar to the remedy afforded to condominium associations.

SECTION 2. Section 421J-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association’s lien shall, except as otherwise provided by law, be as provided in the association documents or, if no priority is provided in the association documents, by the recordation date of the liens; provided that any amendment to the association documents that governs the priority of liens on the unit shall not provide that an association lien shall have priority over a mortgage lien that is recorded before the amendment is recorded. 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 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 association documents. 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 association foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the association documents 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 rental from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, may bid on the unit at foreclosure sale and acquire and hold, lease, mortgage, and convey the unit thereafter as the board deems reasonable. Action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the unpaid assessments owed.

In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Any such grantor or grantee is entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor. The grantee is not liable and the unit conveyed is not subject to a lien for any unpaid assessments against the grantor in excess of the amount set forth in the statement, except as to the amount of subsequently dishonored checks mentioned in the statement as having been received within the thirty day period immediately preceding the date of such statement."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2014.)