

SB 2483

Measure Title: RELATING TO CONDOMINIUM ASSOCIATIONS.

Report Title: Condominium Association; Fiscal Matters; Unpaid Common Fees Assessments; Real Property Tax

Description: Clarifies that a condominium association's lien is subordinate to real property taxes, rather than all taxes. Clarifies that a condominium association may assess unpaid common fees against a purchaser, in addition to a mortgagee, who purchases a delinquent unit in a judicial or nonjudicial power of sale foreclosure.

Companion:

Package: None

Current Referral: CPN, WAM

Introducer(s): BAKER, KIDANI, Gabbard, Nishihara

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce and Consumer Protection

Date: Tuesday, February 4, 2014
Time: 9:00 a.m.
Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2483 Relating to Condominium Associations

The Department of Taxation (Department) provides the following comments on S.B. 2483 for the Committee's consideration.

S.B. 2483 amends section 514B-146, Hawaii Revised Statutes (HRS), by amending both subsection (a) and subsection (g). The Department's testimony only pertains to the amendment to subsection (a), which would amend the rule governing priority of liens in the event a condominium association places a lien on an owner's condominium for unpaid maintenance fees. Under current law, liens for all taxes have priority over liens for maintenance fees. This measure would amend the law to state that only real property taxes have such priority.

The Department has concerns regarding this amendment. The Department notes that there is a sister provision to section 514B-146(a), located in Chapter 514A, HRS, (which governs condominiums established before July 1, 2006 which have not opted into the new rules under Chapter 514B); the provisions are identical. The Department further notes that an examination of the different versions of S.B. 2210 (2004), which became Act 164, Session Laws of Hawaii 2004 (Condominium Property Act), show that the current statutory language is reflected in all drafts. The Department interprets this consistency throughout the various drafts to indicate that the drafters intended to prioritize all tax liens, not just real property tax liens. Since the relevant provision in Chapter 514A and Chapter 514B are identical, the Department believes that all tax liens should continue to have statutory priority.

As a matter of policy, the State and counties have a vested interest in protecting claims for amounts owed to it. Repealing lien priority for State taxes will weaken the State's ability to collect money owed, if the asset that can be collected from is a condominium subject to Chapter 514B. The Department prefers subsection (a) remain unamended and that all tax liens continue receiving statutory priority.

Thank you for the opportunity to provide comments.



Collection Law Section

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Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

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Arlette S. Harada

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Reply to: STEVEN GUTTMAN, CHAIR
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January 31, 2014

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

RE: Senate Bill 2483, Hearing Relating to Condominium Associations on Tuesday, February 4, 2014 at 9:00 AM in Conference Room 229

My name is Arlette Harada and I am testifying in favor of Senate Bill 2483 on behalf of the Collection Section of the Hawaii State Bar Association. **The comments and recommendations submitted herein reflect the position of the Collection Section of the HSBA. The position has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.**

The Collection Section urges you and your colleagues to vote in favor of 1) clarifying the provision of the condominium act setting forth the priority of liens so that only **real property tax** liens on the property which is the subject of the foreclosure and mortgages of record recorded prior to the condominium association's notice of lien would have a senior lien status against the condominium association's lien and 2) allowing condominium associations to collect six months of assessments against both mortgagee purchasers and third party purchasers in foreclosure.

My practice is in the area of collection and foreclosure for condominium and homeowner associations. One of the areas that has been up in the air for several years has been whether other types of tax liens not for the property itself but recorded against the property being foreclosed, such as for income, withholding or general excise taxes, are senior or junior to recorded condominium notices of lien. Thus far, we have been able to work out such issues with the deputy attorney generals for the State tax office. However, I can foresee a dispute arising where we may not be able to work out the distribution of the sales proceeds. SB 2843 will clarify that only real property taxes against the property have senior lien status along with prior recorded mortgages of record.

Testimony on Senate Bill 2483
January 31, 2014

The second issue addressed by the bill would change the provisions of Hawaii Revised Statutes 514B-146(g), (h) and (i) to apply to third party purchasers as well as mortgagee purchasers at foreclosure. The law prior to the 2013 changes required payment of six months of the delinquent assessments at the time of purchase of the unit by third party purchasers and at the time of resale for mortgagee purchasers. The 2013 changes eliminated the time condominium associations needed to wait to obtain the six months of assessments for mortgagee foreclosures. However, due to last minute changes in the bill, the need for third party purchasers to pay the six months of assessments was eliminated. SB 2483 would put back the requirement that third party purchasers, like mortgagee purchasers, pay the six months of assessments.

The application of the language in the 2013 amendment only to mortgagees purchasing in foreclosure means that when a third party purchases at a mortgagee foreclosure and the highest bid is not enough to even pay the mortgagee in full, the condominium association may not recover the 6 months of assessments. An anomalous situation results where the Association can recover only when the mortgagee is the purchaser in foreclosure although in both situations, the association has not been paid for months or years by the delinquent owner. Hawaii Revised Statutes 514B-146(g), (h) and (i) were enacted to provide condominium associations with some recovery of the unpaid assessments given that the associations provide services for the foreclosed unit and maintain the project, which benefits any purchaser of the unit in foreclosure.

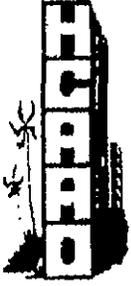
For the above reasons, the Collection Section urges the Committee to vote in favor of Senate Bill 2483. If you have any questions, I would be happy to answer them or you may reach me at 523-0702.

Very truly yours,

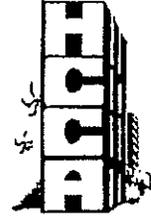


Arlette S. Harada
Treasurer
Collection Law Section of the
Hawaii State Bar Association

cc: Steven Guttman, Chair, Collection Law Section
Patricia Mau, Executive Director, Hawaii State Bar Association



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



January 27, 2014

Sen. Rosalyn H. Baker, Chair
Sen. Brian Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: SB2483 RELATING TO CONDOMINIUM ASSOCIATIONS
Hearing: Tues., Feb. 4, 2014, 9 a.m., Conf. Rm. #3229

Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCAAO agrees with the intent and purpose of the SB2483 and agrees with the clarifications that are being sought by the bill. Accordingly, we ask that you pass out this bill.

Thank you for the opportunity to testify on this matter.

Jane Sugimura
President

888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813-2918
Telephone: (808) 523-0702
February 1, 2014

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 2483

Hearing Date: TUESDAY, February 4, 2014
Time : 9:00 a.m.
Place : Conference Room 229

Chair Baker, Vice Chair Taniguchi, and Members of the Committees,

My name is John Morris and I work as an attorney representing condominium and other homeowner associations. I am testifying in support of SB2483, which makes two worthwhile changes to the condominium law relating to liens.

Section 2, item 1 of the bill clarifies decades of confusion by making it clear that only real property tax liens, not all tax liens, are prior to a condominium association's lien. The priority of the association's lien exists because the association pays for the maintenance and many of the services (e.g., elevators, landscaping, cleaning, etc.) that add value to the unit against which the association claims its lien. The priority given to real property taxes recognizes a similar principle: real property taxes provide many of the services (roads, fire, police, etc.) that add value to the property that pays the real property taxes. In fact, real property tax liens are given priority over the association's lien for that reason.

In contrast, other taxes, such as income taxes, sales taxes, etc., do not have the same connection to the unit/property against which the association and county real property tax departments claim their liens. Therefore, those other types of taxes should not have priority over the association's lien.

Section 2, item 2 of the bill makes a worthwhile change by clarifying that, anyone, not just a mortgagee, who purchases a unit at a foreclosure auction is responsible for paying the association's six-month priority lien. That priority lien guarantees payment of at least six months of maintenance fees to an association in any foreclosure, even if the lender is not paid in full. That priority lien recognizes that the association provides significant value in maintaining and properly repairing the unit

TESTIMONY REGARDING SENATE BILL 2483

February 1, 2014

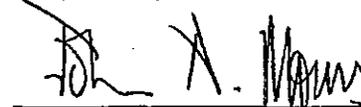
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that is the subject of the foreclosure and should therefore have a guaranteed recovery of six months of maintenance fees in any foreclosure.

Associations lobbied long and hard for that six-month priority lien. Unfortunately, a change in the 2013 legislative session indicated that the association could only claim the six-month priority lien from a mortgagee who purchased a unit in foreclosure, not from anyone else who purchased the unit. Section 2, item 2 of the bill restores the former wording of the law to confirm that anyone who purchases a unit in foreclosure is liable for the association's six-month priority lien.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris", written over a horizontal line.

John A. Morris

SB2483

Submitted on: 1/30/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Hawaii First, Inc.	Support	No

Comments: Hawaii First is one of Hawaii's largest association management companies. This Bill provides clarity to title companies on the association's lien priority and further corrects the inadvertent error of deleting "other parties" for obligations to pay the six month assessment. This Bill only correct the intended purpose of the original law. We SUPPORT the Bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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