

JAN 21 2011

S.B. NO. 234

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514A- Mortgagee in possession of foreclosed property.

5 (a) If a mortgagee takes possession of an apartment after a
6 judicial or nonjudicial power of sale foreclosure, the mortgagee
7 shall remain liable to the association for the payment of all
8 monthly common assessments, association fees, maintenance fees,
9 property taxes, and any other fees or charges relating to the
10 property for which a lien may be placed on the property.

11 (b) While in possession of a foreclosed apartment, the
12 mortgagee shall bring the apartment into adequate physical and
13 aesthetic condition and maintain it so that the foreclosed
14 apartment:

15 (1) Does not increase costs or fees borne by the
16 association or by individual owners;

17 (2) Does not negatively impact the value of the
18 condominium property or any apartment within the



1 condominium property because of the foreclosed
2 apartment's physical or aesthetic condition; and
3 (3) Is maintained in a physical and aesthetic condition
4 that conforms to all applicable association
5 regulations, state laws, and county ordinances and
6 permits the sale of the property at its highest
7 reasonable market value.

8 (c) A mortgagee's obligations under this section shall
9 terminate upon transfer of the apartment to a subsequent
10 purchaser; provided that the mortgagee shall not be obligated to
11 retain possession of the apartment in order to comply with this
12 section."

13 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§514B- Mortgagee in possession of foreclosed property.

17 (a) If a mortgagee takes possession of an apartment after a
18 judicial or nonjudicial power of sale foreclosure, the mortgagee
19 shall remain liable to the association for the payment of all
20 monthly common assessments, association fees, maintenance fees,
21 property taxes, and any other fees or charges relating to the
22 property for which a lien may be placed on the property.



1 (b) While in possession of a foreclosed apartment, the
2 mortgagee shall bring the apartment into adequate physical and
3 aesthetic condition and maintain it so that the foreclosed
4 apartment:

5 (1) Does not increase costs or fees borne by the
6 association or by individual owners;

7 (2) Does not negatively impact the value of the
8 condominium property or any apartment within the
9 condominium property because of the foreclosed
10 apartment's physical or aesthetic condition; and

11 (3) Is maintained in a physical and aesthetic condition
12 that conforms to all applicable association
13 regulations, state laws, and county ordinances and
14 permits the sale of the property at its highest
15 reasonable market value.

16 (c) A mortgagee's obligations under this section shall
17 terminate upon transfer of the apartment to a subsequent
18 purchaser; provided that the mortgagee shall not be obligated to
19 retain possession of the apartment in order to comply with this
20 section."



1 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§667- Mortgagee in possession of foreclosed property.

5 (a) If a mortgagee takes possession of residential real
6 property after a judicial or nonjudicial power of sale
7 foreclosure, the mortgagee shall remain liable for the payment
8 of all applicable common assessments, association fees,
9 maintenance fees, property taxes, and any other fees or charges
10 relating to the property for which a lien may be placed on the
11 property.

12 (b) While in possession of a foreclosed residential real
13 property, the mortgagee shall bring the property into adequate
14 physical and aesthetic condition and maintain it so that the
15 foreclosed property:

16 (1) Does not increase costs or fees borne by any
17 applicable homeowners association or by individual
18 owners within the association;

19 (2) Does not negatively impact the value of the property
20 or any other surrounding property because of the
21 foreclosed property's physical or aesthetic condition;

22 and



1 (3) Is maintained in a physical and aesthetic condition
2 that conforms to all applicable association
3 regulations, state laws, and county ordinances and
4 permits the sale of the property at its highest
5 reasonable market value.

6 (c) A mortgagee's obligations under this section shall
7 terminate upon transfer of the property to a subsequent
8 purchaser; provided that the mortgagee shall not be obligated to
9 retain possession of the property in order to comply with this
10 section."

11 SECTION 4. Section 514A-90, Hawaii Revised Statutes, is
12 amended by amending subsection (h) to read as follows:

13 "(h) The amount of the special assessment assessed under
14 subsection (g) shall not exceed the total amount of unpaid
15 regular monthly common assessments that were assessed during the
16 six months immediately preceding the completion of the judicial
17 or nonjudicial power of sale foreclosure. [~~In no event shall~~]
18 If a mortgagee of the subject apartment takes possession of the
19 apartment after foreclosure, the mortgagee shall be liable for
20 the total amount of unpaid regular monthly common assessments
21 that were assessed during the six-month period immediately
22 preceding the completion of the foreclosure. If any party other



1 than a mortgagee of the subject property takes possession of the
2 apartment after foreclosure, the amount of the special
3 assessment shall not exceed the sum of \$3,600."

4 SECTION 5. Section 514B-146, Hawaii Revised Statutes, is
5 amended by amending subsection (h) to read as follows:

6 "(h) The amount of the special assessment assessed under
7 subsection (g) shall not exceed the total amount of unpaid
8 regular monthly common assessments that were assessed during the
9 six months immediately preceding the completion of the judicial
10 or nonjudicial power of sale foreclosure. [~~In no event shall~~]
11 If a mortgagee of the subject apartment takes possession of the
12 apartment after foreclosure, the mortgagee shall be liable for
13 the total amount of unpaid regular monthly common assessments
14 that were assessed during the six-month period immediately
15 preceding the completion of the foreclosure. If any party other
16 than a mortgagee of the subject property takes possession of the
17 apartment after foreclosure, the amount of the special
18 assessment shall not exceed the sum of \$3,600."

19 SECTION 6. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

S.B. NO. 234

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect July 1, 2011.

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INTRODUCED BY:

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Report Title:

Mortgage Foreclosures; Mortgage Obligations

Description:

Requires a mortgagee in possession of a foreclosed property to pay all costs or fees related to the property for which a lien may be placed and to maintain the foreclosed property in a certain condition until transfer to a subsequent purchaser; removes the cap on past-due association fees for a mortgagee that takes possession of a foreclosed condominium.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

