

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

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

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



1           Accordingly, the purpose of this Act is to amend state  
2 condominium law to clarify terms related to association fiscal  
3 matters and liens for assessments.

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

6           1. By amending subsection (a) to read:

7           "(a) All sums assessed by the association but unpaid for  
8 the share of the common expenses chargeable to any unit shall  
9 constitute a lien on the unit with priority over all other  
10 liens, except:

11           (1) Liens for real property taxes and assessments lawfully  
12 imposed by governmental authority against the unit;  
13 and

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

19 provided that a lien recorded by an association for unpaid  
20 assessments shall expire six years from the date of recordation  
21 unless proceedings to enforce the lien are instituted prior to  
22 the expiration of the lien; provided further that the expiration



1 of a recorded lien shall in no way affect the association's  
2 automatic lien that arises pursuant to this subsection or the  
3 declaration or bylaws. Any proceedings to enforce an  
4 association's lien for any assessment shall be instituted within  
5 six years after the assessment became due; provided that if the  
6 owner of a unit subject to a lien of the association files a  
7 petition for relief under the United States Bankruptcy Code (11  
8 U.S.C. §101 et seq.), the period of time for instituting  
9 proceedings to enforce the association's lien shall be tolled  
10 until thirty days after the automatic stay of proceedings under  
11 section 362 of the United States Bankruptcy Code (11 U.S.C.  
12 §362) is lifted.

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



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

15           2. By amending subsection (g) to read:

16           "(g) Subject to this subsection, and subsections (h) and  
17 (i), the board may specially assess the amount of the unpaid  
18 regular monthly common assessments for common expenses against a  
19 mortgagee or other purchaser who, in a judicial or nonjudicial  
20 power of sale foreclosure, purchases a delinquent unit; provided  
21 that the mortgagee or other purchaser may require the  
22 association to provide at no charge a notice of the



1 association's intent to claim lien against the delinquent unit  
2 for the amount of the special assessment, prior to the  
3 subsequent purchaser's acquisition of title to the delinquent  
4 unit. The notice shall state the amount of the special  
5 assessment, how that amount was calculated, and the legal  
6 description of the unit."

7 SECTION 3. New statutory material is underscored.

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

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# S.B. NO. 2483

**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.

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

