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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514B-105, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) No association shall deduct and apply portions of  
4 common expense payments received from a unit owner to unpaid  
5 late fees, legal fees, fines, and interest (other than amounts  
6 remitted by a unit in payment of late fees, legal fees, fines,  
7 and interest) unless the board adopts and annually distributes  
8 to all owners a policy stating that:

- 9 (1) Failure to pay late fees, legal fees, fines, and  
10 interest may result in the deduction of such late  
11 fees, legal fees, fines, and interest from future  
12 common expense payments, so long as a delinquency  
13 continues to exist; and
- 14 (2) Late fees may be imposed against any future common  
15 expense payment that is less than the full amount owed  
16 due to the deduction of unpaid late fees, legal fees,  
17 fines, and interest from the payment.



1 The policy shall also be included in any agreement by an owner  
2 to allow the association to automatically withdraw assessments  
3 from an owner's bank account."

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

6 "§514B-146 Association fiscal matters; lien for  
7 assessments. (a) All sums assessed by the association but  
8 unpaid for the share of the common expenses chargeable to any  
9 unit shall constitute a lien on the unit with priority over all  
10 other 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)~~, (h)], all sums  
15 unpaid on any mortgage of record that was recorded  
16 prior to 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



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

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



1 fees, or late fees, and the foreclosure of any such lien shall  
2 be filed in court pursuant to part IA of chapter 667.

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

17 (b) Except as provided in subsection [~~(g)~~,] (h), when the  
18 mortgagee of a mortgage of record or other purchaser of a unit  
19 obtains title to the unit as a result of foreclosure of the  
20 mortgage, the acquirer of title and the acquirer's successors  
21 and assigns shall not be liable for the share of the common



1 expenses or assessments by the association chargeable to the  
2 unit that became due prior to the acquisition of title to the  
3 unit by the acquirer. The unpaid share of common expenses or  
4 assessments shall be deemed to be common expenses collectible  
5 from all of the unit owners, including the acquirer and the  
6 acquirer's successors and assigns. The mortgagee of record or  
7 other purchaser of the unit shall be deemed to acquire title and  
8 shall be required to pay the unit's share of common expenses and  
9 assessments beginning:

- 10 (1) Thirty-six days after the order confirming the sale to  
11 the purchaser has been filed with the court;
- 12 (2) Sixty days after the hearing at which the court grants  
13 the motion to confirm the sale to the purchaser;
- 14 (3) Thirty days after the public sale in a nonjudicial  
15 power of sale foreclosure conducted pursuant to  
16 chapter 667; or
- 17 (4) Upon the recording of the instrument of conveyance;  
18 whichever occurs first; provided that the mortgagee of record or  
19 other purchaser of the unit shall not be deemed to acquire title  
20 under paragraph (1), (2), or (3), if transfer of title is  
21 delayed past the thirty-six days specified in paragraph (1), the



1 sixty days specified in paragraph (2), or the thirty days  
2 specified in paragraph (3), when a person who appears at the  
3 hearing on the motion or a party to the foreclosure action  
4 requests reconsideration of the motion or order to confirm sale,  
5 objects to the form of the proposed order to confirm sale,  
6 appeals the decision of the court to grant the motion to confirm  
7 sale, or the debtor or mortgagor declares bankruptcy or is  
8 involuntarily placed into bankruptcy. In any such case, the  
9 mortgagee of record or other purchaser of the unit shall be  
10 deemed to acquire title upon recordation of the instrument of  
11 conveyance.

12 (c) No unit owner shall withhold any assessment claimed by  
13 the association. A [~~unit owner who disputes the amount of an~~  
14 ~~assessment may request~~] demand for payment from an association  
15 shall include a written statement clearly indicating:

- 16 (1) The amount of common expenses included in the  
17 assessment, including the due date of each amount  
18 claimed;
- 19 (2) The amount of any penalty[~~7~~] or fine, late fee, lien  
20 filing fee, and any other charge included in the



1           assessment~~[7]~~ that is not imposed on all unit owners  
2           as a common expense;

3           (3) The amount of attorneys' fees and costs, if any,  
4           included in the assessment;

5           (4) That under Hawaii law, a unit owner has no right to  
6           withhold assessments for any reason;

7           (5) That a unit owner has a right to demand mediation or  
8           arbitration to resolve disputes about the amount or  
9           validity of an association's assessment~~[7]~~; provided  
10          that the unit owner immediately pays the assessment in  
11          full and keeps assessments current; and

12          (6) That payment in full of the assessment ~~[does]~~ shall  
13          not prevent the owner from contesting the assessment  
14          or receiving a refund of amounts not owed.

15          (d) Nothing in this section shall limit the rights of an  
16          owner to the protection of all fair debt collection procedures  
17          mandated under federal and state law.

18          ~~[(d)]~~ (e) A unit owner who pays an association the full  
19          amount claimed by the association may file in small claims court  
20          or require the association to mediate to resolve any disputes  
21          concerning the amount or validity of the association's claim.



1 If the unit owner and the association are unable to resolve the  
2 dispute through mediation, either party may file for arbitration  
3 under section 514B-162; provided that a unit owner may only file  
4 for arbitration if all amounts claimed by the association are  
5 paid in full on or before the date of filing. If the unit owner  
6 fails to keep all association assessments current during the  
7 arbitration, the association may ask the arbitrator to  
8 temporarily suspend the arbitration proceedings. If the unit  
9 owner pays all association assessments within thirty days of the  
10 date of suspension, the unit owner may ask the arbitrator to  
11 recommence the arbitration proceedings. If the unit owner fails  
12 to pay all association assessments by the end of the thirty-day  
13 period, the association may ask the arbitrator to dismiss the  
14 arbitration proceedings. The unit owner shall be entitled to a  
15 refund of any amounts paid to the association [~~which~~] that are  
16 not owed.

17 [~~(e)~~] (f) In conjunction with or as an alternative to  
18 foreclosure proceedings under subsection (a), where a unit is  
19 owner-occupied, the association may authorize its managing agent  
20 or board to, after sixty days' written notice to the unit owner  
21 and to the unit's first mortgagee of the nonpayment of the





1 unit's share of the common expenses, terminate the delinquent  
2 unit's access to the common elements and cease supplying a  
3 delinquent unit with any and all services normally supplied or  
4 paid for by the association. Any terminated services and  
5 privileges shall be restored upon payment of all delinquent  
6 assessments but need not be restored until payment in full is  
7 received.

8 ~~[(f)]~~ (g) Before the board or managing agent may take the  
9 actions permitted under subsection ~~[(e)]~~ (f), the board shall  
10 adopt a written policy providing for such actions and have the  
11 policy approved by a majority vote of the unit owners at an  
12 annual or special meeting of the association or by the written  
13 consent of a majority of the unit owners.

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



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

6 ~~[(h)]~~ (i) The amount of the special assessment assessed  
7 under subsection ~~[(g)]~~ (h) shall not exceed the total amount of  
8 unpaid regular monthly common assessments that were assessed  
9 during the six months immediately preceding the completion of  
10 the judicial or nonjudicial power of sale foreclosure.

11 ~~[(i)]~~ (j) For purposes of subsections ~~[(g)]~~ (h) and ~~[(h),]~~  
12 (i), the following definitions shall apply, unless the context  
13 requires otherwise:

14 "Completion" means:

15 (1) In a nonjudicial power of sale foreclosure, when the  
16 affidavit after public sale is recorded pursuant to  
17 section 667-33; and

18 (2) In a judicial foreclosure, when a purchaser is deemed  
19 to acquire title pursuant to subsection (b).

20 "Regular monthly common assessments" does not include:



1 (1) Any other special assessment, except for a special  
2 assessment imposed on all units as part of a budget  
3 adopted pursuant to section 514B-148;

4 (2) Late charges, fines, or penalties;

5 (3) Interest assessed by the association;

6 (4) Any lien arising out of the assessment; or

7 (5) Any fees or costs related to the collection or  
8 enforcement of the assessment, including attorneys'  
9 fees and court costs.

10 [~~(j)~~] (k) The cost of a release of any lien filed pursuant  
11 to this section shall be paid by the party requesting the  
12 release.

13 [~~(k)~~] (l) After any judicial or nonjudicial foreclosure  
14 proceeding in which the association acquires title to the unit,  
15 any excess rental income received by the association from the  
16 unit shall be paid to existing lien holders based on the  
17 priority of lien, and not on a pro rata basis, and shall be  
18 applied to the benefit of the unit owner. For purposes of this  
19 subsection, excess rental income shall be any net income  
20 received by the association after a court has issued a final  
21 judgment determining the priority of a senior mortgagee and



1 after paying, crediting, or reimbursing the association or a  
2 third party for:

- 3 (1) The lien for delinquent assessments pursuant to  
4 subsections (a) and (b);
- 5 (2) Any maintenance fee delinquency against the unit;
- 6 (3) Attorney's fees and other collection costs related to  
7 the association's foreclosure of the unit; or
- 8 (4) Any costs incurred by the association for the rental,  
9 repair, maintenance, or rehabilitation of the unit  
10 while the association is in possession of the unit  
11 including monthly association maintenance fees,  
12 management fees, real estate commissions, cleaning and  
13 repair expenses for the unit, and general excise taxes  
14 paid on rental income;

15 provided that the lien for delinquent assessments under  
16 paragraph (1) shall be paid, credited, or reimbursed first."

17 SECTION 3. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Condominiums; Associations; Unit Owners; Annual Distribution;  
Mandatory Disclosure; Demand for Payment

**Description:**

Requires annual distribution of any policy stating that the association may deduct and apply portions of common expense assessments to unpaid late fees, legal fees, fines, and interest and that such policy be included in any agreement by an owner that allows the association to automatically withdraw assessments from an owner's bank account. Requires an association to disclose certain information upon demand for payment of an assessment. (HB1873 HD1)

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

