
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that a recent
2 Intermediate Court of Appeals case, Sakal v. Ass'n of Apartment
3 Owners of Hawaiian Monarch, 426 P.3d 443 (Haw. Ct. App. 2018),
4 held that power of sale language must exist in a condominium
5 association's bylaws or another enforceable agreement with its
6 unit owners, in order for the association to avail itself of the
7 nonjudicial power of sale foreclosure procedures set forth in
8 chapter 667, Hawaii Revised Statutes. Due to the Sakal
9 decision, many associations have lost the benefit of the
10 nonjudicial foreclosure process, which has come as a surprise to
11 these associations who have, for years, relied in good faith
12 upon previous legislative intent, which authorized condominium
13 associations to conduct judicial and nonjudicial foreclosures.
14 Concerns have been raised that, as a result, an association's
15 ability to conduct a nonjudicial foreclosure will no longer
16 depend on legislative intent, but whether specific language in



1 the declaration or bylaws was included when the project was
2 first created.

3 The purpose of this Act is to clarify that condominium
4 associations are permitted to pursue foreclosure by action or
5 nonjudicial or power of sale foreclosure remedies, regardless of
6 the presence or absence of power of sale language in the
7 associations' governing documents.

8 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

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

14 (1) Liens for real property taxes and assessments lawfully
15 imposed by governmental authority against the unit;

16 and

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



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

17 The lien of the association may be foreclosed by action or
18 by nonjudicial or power of sale foreclosure [~~procedures set~~
19 ~~forth in chapter 667,~~] by the managing agent or board, acting on
20 behalf of the association and in the name of the association[+].
21 Regardless of the presence or absence of power of sale language in



1 an association's governing documents, the foregoing remedies may
2 be completed using procedures set forth in chapter 667; provided
3 that no association may exercise the nonjudicial or power of
4 sale remedies provided in [~~chapter 667~~] this section to
5 foreclose a lien against any unit that arises solely from fines,
6 penalties, legal fees, or late fees, and the foreclosure of any
7 such lien shall be filed in court pursuant to part IA of chapter
8 667.

9 In any such foreclosure, the unit owner shall be required
10 to pay a reasonable rental for the unit, if so provided in the
11 bylaws or the law, and the plaintiff in the foreclosure shall be
12 entitled to the appointment of a receiver to collect the rental
13 owed by the unit owner or any tenant of the unit. If the
14 association is the plaintiff, it may request that its managing
15 agent be appointed as receiver to collect the rent from the
16 tenant. The managing agent or board, acting on behalf of the
17 association and in the name of the association, unless
18 prohibited by the declaration, may bid on the unit at
19 foreclosure sale, and acquire and hold, lease, mortgage, and
20 convey the unit. Action to recover a money judgment for unpaid



1 common expenses shall be maintainable without foreclosing or
2 waiving the lien securing the unpaid common expenses owed."

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

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

6



Report Title:

Condominiums; Associations; Nonjudicial Foreclosure Remedy

Description:

Clarifies that a condominium association may exercise nonjudicial or power of sale foreclosure remedies regardless of the presence or absence of power of sale language in an association's governing documents. Takes effect on 7/1/2050.
(SD1)

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