

JAN 18 2019

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514B-157, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "(a) All costs and expenses, including reasonable
4 attorneys' fees, incurred by or on behalf of the association
5 for:

6 (1) Collecting any delinquent assessments against any
7 owner's unit[+], delinquent amounts owed for common
8 expense assessments, or other claims imposed by the
9 association;

10 (2) Foreclosing any lien thereon; or

11 (3) Enforcing any provision of the declaration, bylaws,
12 house rules, and this chapter, or the rules of the
13 real estate commission;

14 against an owner, occupant, tenant, employee of an owner, or any
15 other person who may in any manner use the property, shall be
16 [~~promptly~~] paid [~~on-demand~~] to the association by such person or
17 persons; provided that [~~if~~] any claim for attorney's fees shall



1 not be in excess of twenty-five per cent of the total balance
2 owed to the association; provided further that an association
3 shall deliver to the unit owner, occupant, or tenant a written
4 demand for all amounts due, which shall include a billing
5 statement or invoice reflecting the breakdown of all the amounts
6 owed. The owner, occupant, or tenant shall have the right to
7 dispute claims for attorney's fees in full or in part before the
8 fees are paid. The owner, occupant, or tenant shall have sixty
9 days to cure prior to the association taking any enforcement
10 action. The owner, occupant, or tenant shall have the right to
11 dispute claims related to governing document violations imposed
12 by the association before the claims are paid.

13 (b) If the claims upon which the association takes any
14 action are not substantiated, all costs and expenses, including
15 reasonable attorneys' fees, incurred by any such person or
16 persons as a result of the action of the association, shall be
17 promptly paid on demand to such person or persons by the
18 association.

19 ~~[(b)]~~ (c) If any claim by an owner is substantiated in any
20 action against an association, any of its officers or directors,
21 or its board to enforce any provision of the declaration,



1 bylaws, house rules, or this chapter, then all reasonable and
2 necessary expenses, costs, and attorneys' fees, which shall not
3 exceed twenty-five per cent of the total balance owed, incurred
4 by an owner shall be awarded to such owner; provided that no
5 such award shall be made in any derivative action unless:

6 (1) The owner first shall have demanded and allowed
7 reasonable time for the board to pursue such
8 enforcement; or

9 (2) The owner demonstrates to the satisfaction of the
10 court that a demand for enforcement made to the board
11 would have been fruitless.

12 (d) If any claim by an owner is not substantiated in any
13 court action against an association, any of its officers or
14 directors, or its board to enforce any provision of the
15 declaration, bylaws, house rules, or this chapter, then all
16 reasonable and necessary expenses, costs, and attorneys' fees
17 not exceeding twenty-five per cent of the total balance owed,
18 incurred by an association shall be awarded to the association,
19 unless before filing the action in court the owner has first
20 submitted the claim to mediation, or to arbitration under



1 subpart D, and made a good faith effort to resolve the dispute
2 under any of those procedures."

3 SECTION 2. Section 667-19, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§667-19 Association foreclosures; cure of default;
6 payment plan. If a foreclosure by action is initiated by an
7 association pursuant to section 421J-10.5 or 514B-146:

- 8 (1) At the time of the commencement of the foreclosure by
9 action, the association shall serve the unit owner
10 with written contact information for approved housing
11 counselors and approved budget and credit counselors;
- 12 (2) A unit owner may cure the default within sixty days
13 after service of the association's complaint for
14 foreclosure by action by paying the association the
15 full amount of the default, including the foreclosing
16 association's attorneys' fees [~~and~~] not to exceed
17 twenty-five per cent of the total delinquent balance,
18 costs, and all other fees and costs related to the
19 default, along with any additional amounts estimated
20 to be incurred by the foreclosing association;



- 1 (3) A unit owner may submit a payment plan within thirty
2 days after service of the association's complaint for
3 foreclosure by action. The unit owner shall submit
4 the payment plan to the association or its attorney by
5 certified mail return receipt requested or by hand
6 delivery. The association shall not reject a
7 reasonable payment plan. Payments made pursuant to an
8 approved payment plan shall first be applied to
9 delinquent assessments, then to any interest, late
10 fees, or penalties, then to attorneys' fees not to
11 exceed twenty-five per cent of the total balance owed.
12 A unit owner's failure to strictly perform any agreed-
13 upon payment plan shall entitle the association to
14 pursue its remedies without further delay. For
15 purposes of this paragraph, "reasonable payment plan"
16 means a plan that provides for:
17 (A) Timely payment of all assessments that become due
18 after the date that the payment plan is proposed;
19 and
20 (B) Additional monthly payments of an amount
21 sufficient to cure the default, within a



1 reasonable period under the circumstances as
2 determined by the board of directors in its
3 discretion; provided that a period of up to
4 twelve months shall be deemed reasonable; and
5 provided further that the board of directors
6 shall have the discretion to agree to a payment
7 plan in excess of twelve months;

8 (4) From and after the date that the unit owner gives
9 written notice to the association of the unit owner's
10 intent to cure the default pursuant to paragraph (2)
11 or timely submits a payment plan pursuant to paragraph
12 (3), any foreclosure by action shall be stayed during
13 the sixty-day period to cure the default or during the
14 term of the payment plan or a longer period that is
15 agreed upon by the parties;

16 (5) If the default is cured pursuant to paragraph (2), the
17 association shall dismiss the foreclosure by action.
18 If the parties have agreed on a payment plan pursuant
19 to paragraph (3), the association shall stay the
20 foreclosure by action. Within fourteen days of the
21 date of the cure or an agreement on a payment plan,



S.B. NO. 634

Report Title:

Condominiums; Associations; Attorneys' Fees; Limitation; Payment Plan

Description:

Limits the amount of attorney's fees that may be collected from any condominium owner, occupant, or tenant by or on behalf of an association to twenty-five per cent of the amount due after a sixty-day cure period. Outlines application of payments for payment plans.

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

