

2014 End of Session Report

Planned Community Association, Collection-Effective April 30, 2014, HB 2045 gives community associations the same rights as condominium associations to assess or pursue claims against buyers in a voluntary conveyance for delinquent assessments owed by sellers. Similarly, the Board and managing agent need to provide statements on amounts owed to escrow, realtor and both parties in the sale.

Association Non-Judicial Foreclosure-Effective April 1, HB 2585 fixes a loophole in the existing statute by allowing Associations to serve any parties other than the unit owners, which cannot be otherwise served, by notice of publication and posting in a special proceeding in the circuit court in order to proceed with a non-judicial foreclosure.

Condominium Projects, Agricultural Uses-SB 2078 clarifies that agricultural uses and activities on lands classified as agricultural shall not be restricted by any private agreement contained in condominium project documents, except for a restriction taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of April 23, 2014.

Condominium, Owners' Access to Documents & Records-HB 2401 consolidates into one section the documents, records and information that must be made available to unit owners or their authorized agents and specifies that the Association and its managing agent must provide these no later than 30 days after receipt of a written request. It also gives the Real Estate Commission powers to investigate, issue cease and desist orders, enjoin and impose penalties against violations of this provision. The measure went into effect July 1.

Condominium, Cumulative Voting, Board Directors-HB 2482 clarifies the process for cumulative voting for an election at an association meeting, amends the definition of "majority" or "majority of the unit owners" and makes corresponding technical amendments associated with this amended definition. It also clarifies that directors who are appointed to fill vacancies on a board of directors must stand for election at the next annual meeting or a duly noticed special meeting. It also clarifies that approval of a lease rent collection system and an annual audit of an association's financial accounts and cash balance may be waived at an association meeting by a vote of a majority of all the unit owners if the association is composed of less than twenty owners. The measure went into effect July 1.

Condominium, Unpaid Assessment, Board Election-SB 2483 clarifies that a condominium association's lien is subordinate to real property taxes, rather than all taxes. It also clarifies that a condominium association may assess unpaid common maintenance fees against any purchaser who purchases a delinquent unit in a foreclosure. It finally specifies that a condominium board may only fill board vacancies temporarily until a duly noticed election. The measure went into effect July 1.

Private Guards, Continuing Education-SB 2486 amends various provisions relating to private guards and individuals acting in a guard capacity; reduces the continuing education requirement to four hours every two years; delays the continuing education requirement to prior to the June 30, 2014, renewal cycle; and makes permanent the registration and licensure requirements for private guards and

individuals acting in a guard capacity by repealing the sunset date of Act 208, Sessions Laws of Hawaii 2010. The measure went into effect June 29.

Solar Energy Device, Warranty, Contractors-SB 2657 requires a contractor that installs a solar energy device to notify the private entity that installation might void the roofing warranties or guarantees. Unless the private entity forgoes the roofing warranty or guarantee, a contractor that installs a solar energy device must obtain written approval from the roof manufacturer and follow written instructions for waterproofing roof penetrations from the roof manufacturer. A roofing contractor that waterproofs roof penetrations related to the installation of a solar energy device must honor the roof warranty or guarantee, provided that if either the roofing contractor's guaranty or the roofing manufacturer's warranty is no longer in effect, the contractor who installs the solar energy device and waterproofs the penetration shall apply the contractor's or lessor's standard labor and workmanship warranty. The measure went into immediate effect.

The following new laws do not directly relate to Associations but they impact all homeowners or legal proceedings. Directors and property managers should know about these when their associations are involved in a relevant transaction or legal proceeding.

Residential Landlord-Tenant Code, Eviction, Medical Marijuana-Effective November 1, HB 1503 voids any rental agreement provision that allows for eviction of a tenant who has a valid certificate for the medical use of marijuana unless (1) the rental agreement allows for eviction for smoking tobacco and the medical marijuana is used by means of smoking; or (2) the project documents of the condominium or community association prohibit the medical use of marijuana.

Real Estate Appraisals, Arbitration Awards-HB 1830 requires a licensed or certified real estate appraiser, who is named or appointed as an arbitrator in a proceeding, to determine the fair market value, fair market rental or fair and reasonable rent of real property, shall record all arbitration awards, records of awards, and any supplementary, dissenting or explanatory opinions in the Bureau of Conveyances as public records. This bill became law without the Governor's signature on April 30, 2014.

Judgment Liens, Collection-Effective July 1, HB 1579 clarifies that money judgments are considered valid liens against all real property, including registered property, when recorded in the Bureau of Conveyances.

District Court Jurisdiction, Collection: Effective April 17, HB 1846 provides the maximum claim amount in civil cases within the district court's jurisdiction increased from \$25,000 to \$40,000.

Service of Process, Collection-SB 2072 supersedes a 2013 appellate case decision on serving a summons and specifies that service by certified, registered, or express mail sent to the addressee only as ordered by the court upon the defendant within the state shall be valid for civil actions in the nature of assumpsit if a reasonable attempt at personal delivery has not been successful.