

I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2010 (SECOND) Regular Session

Bill No. 399-30 (COR)

Introduced by:

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2010 MAY 18 AM 10:33  
NANA

AN ACT TO GIVE "SUPER LIEN" PRIORITY TO COMMON AREA ASSESSMENTS, FEES AND PENALTIES IMPOSED BY ASSOCIATIONS OF APARTMENT OWNERS THROUGH THE AMENDMENT OF §§ 45124 & 45125 AND THE ADDITION OF NEW § 45125.1 OF CHAPTER 45, TITLE 21, GUAM CODE ANNOTATED.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. **Legislative Findings and Intent.** *I Liheslaturan Guahan*

3 finds that the present law which establishes the priority of mortgages  
4 relative to liens arising from common area assessments, fees and penalties  
5 imposed by associations of apartment owners ("Assessments") reduces the  
6 ability of associations of apartment owners to recover delinquent  
7 Assessments. This is due to the fact that under the current law when a  
8 mortgage secured on an apartment is foreclosed it extinguishes all liens  
9 arising from Assessments imposed after the recordation of the mortgage.  
10 This, in turn, renders these unpaid Assessments effectively uncollectable.  
11 These unpaid Assessments are passed on to, and absorbed by, the other  
12 apartment owners who are forced to pay additional fees to offset the  
13 unpaid Assessments.

14 The Assessments paid by apartment owners go toward the  
15 maintenance, repair and upkeep of the condominium which in turn greatly  
16 increases the value of all apartments including those owned by those who  
17 fail to pay their Assessments. This represents an unfair windfall to these

1 non-paying apartment owners, as well as to lenders who through their  
2 mortgages hold security interests in these apartments and who gain the  
3 benefits of this maintenance, repair and upkeep even as they never pay for  
4 it. This windfall is further realized by a lender when it acquires an  
5 apartment through the foreclosure of its mortgage. When this happens, the  
6 lender obtains an apartment whose value has been preserved and  
7 enhanced by the payment of Assessments by the other apartment owners.  
8 In spite of this, the lender *never* has to repay the other apartment owners  
9 for bearing the cost of its share of the Assessments and thus the  
10 maintenance, repair and upkeep of the lender's apartment. Instead, the  
11 lender reaps a substantial windfall at the expense of the other apartment  
12 owners. *I Liheslaturan Guahan* finds this arrangement to be unfair and  
13 inequitable.

14 The present legal regime thus unfairly forces apartment owners to  
15 finance the upkeep of security interests held by third-party banks, lenders  
16 or other mortgagees, resulting in an unfair and unearned gain to these  
17 mortgagees and to new apartment owners who purchase subsequent to a  
18 foreclosure. In the alternative, the condominium is forced to forgo  
19 necessary maintenance, repairs and upkeep that would otherwise have  
20 been covered by the Assessment. Thus, the current law also contributes to  
21 the growing dilapidation and devaluation of condominium buildings and  
22 their constituent apartments on Guam.

23 In order to curb this trend, restore value to condominium buildings  
24 and apartments, and to protect the investments and interests of apartment  
25 owners, the present law must be amended to give Assessments lien priority  
26 over prior recorded mortgages.

27 **Section 2. Section 45124 of Chapter 45 of Title 21 of the Guam**  
28 **Code Annotated is hereby *amended* to read as follows:**

1           **“§ 45124. Priority of Lien.**

2           (a) All sums for the share of the common expenses chargeable  
3 to any apartment, as well as any penalties or other charges assessed  
4 by the association of apartment owners but unpaid [~~for the share of~~  
5 ~~the common expenses chargeable to any apartment]~~ shall constitute a  
6 lien on the apartment prior to all other liens, except only [(4)] liens for  
7 a real estate taxes and assessments lawfully imposed by  
8 governmental authority against the apartment[, ~~and (2) all sums~~  
9 ~~unpaid on mortgages of record]~~. The lien may be foreclosed by suit  
10 by the manager or Board of Directors, acting on behalf of the  
11 apartment owners, in like manner as a mortgage of real property. In  
12 any such foreclosure the apartment owner shall be required to pay a  
13 reasonable rental for the apartment[, ~~if so provided in the bylaws,~~  
14 and the plaintiff in the foreclosure shall be entitled to the  
15 appointment of a receiver to collect the same. The manager or Board  
16 of Directors, acting on behalf of the apartment owners, may, unless  
17 prohibited by the declaration, bid on the apartment at foreclosure  
18 sale, and acquire and hold, lease, mortgage, and convey the same.  
19 Suit to recover a money judgment for unpaid common expense shall  
20 be maintainable without foreclosing or waiving the lien securing the  
21 same.

22           ~~[(b) Where the mortgagee of a mortgage of record or other~~  
23 ~~purchaser of an apartment obtains title to the apartment as a result of~~  
24 ~~foreclosure of the mortgage, the acquirer of title, his successors and~~  
25 ~~assigns shall not be liable for the share of the common expenses of~~  
26 ~~assessments by the association of apartment owners chargeable to the~~  
27 ~~apartment which became due prior to the acquisition of title to the~~  
28 ~~apartment by the acquirer. The unpaid share of common expenses or~~

1        ~~assessments shall be deemed to be common expenses collectible from~~  
2        ~~all of the apartment owners, including the acquirer, his successors~~  
3        ~~and assigns.]”~~

4        **Section 3. Section 45125 of Chapter 45 of Title 21 of the Guam**  
5        **Code Annotated is hereby *amended* to read as follows:**

6        **“§ 45125. Joint and Several Liability of Grantor and Grantee For**  
7        **Unpaid Common Expenses.**

8        The lien for unpaid common expenses, penalties and other  
9        charges constitutes and shall be a lien that attaches to and shall run  
10       with the apartment, and shall not be extinguished by the sale,  
11       transfer, conveyance or foreclosure of any interest in or to the  
12       apartment. All sales, transfers, conveyances or foreclosures shall be  
13       subject to the lien for unpaid common expenses, penalties and other  
14       charges. [In a voluntary conveyance,] In addition, the grantee of an  
15       apartment is jointly and severally liable *in personam* with the grantor  
16       for all unpaid~~[assessments against the latter for his share of the]~~  
17       common expenses against the apartment up to the time of the grant  
18       or conveyance, plus any interest or charges which subsequently  
19       accrue thereon, without[, ] prejudice to the grantee's right to recover  
20       from the grantor the amounts paid by the grantee therefor.  
21       ~~[However, any such grantor or grantee is entitled to a statement from~~  
22       ~~the manager or Board of Directors setting forth the amount of the~~  
23       ~~unpaid assessments against the grantor, and neither the grantor nor~~  
24       ~~the grantee is liable for, nor is the apartment conveyed subject to a~~  
25       ~~lien for, any unpaid assessments against the grantor in excess of the~~  
26       ~~amount therein set forth.]”~~

27       **Section 4. New Section 45125.1 is hereby *added* to Chapter 45 of**  
28       **Title 21 of the Guam Code Annotated to read as follows:**

1           **“§ 45125. 1. Statement of Unpaid Common Expenses.**

2           (a)    An apartment owner, and any mortgagee of a mortgage  
3           secured by an apartment, shall be entitled, at any time, to a written  
4           statement from the manager or Board of Directors of the association  
5           of apartment owners setting forth the amount of the unpaid common  
6           expenses against the apartment up to the date of such request. The  
7           manager or Board of Directors shall provide such written statement  
8           within ten (10) days after the receipt of a written request from the  
9           owner or mortgagee.

10          (b)    In the event of foreclosure of a mortgage secured on an  
11          apartment, the mortgagee shall, at least fifteen (15) days prior to the  
12          date of the foreclosure sale, obtain such written statement of the  
13          amount of unpaid common expense due against the apartment, and  
14          shall disclose the amount owed to all interested parties inquiring  
15          prior and up to the date and time of the foreclosure sale. Further,  
16          such mortgagee shall at the foreclosure sale, and prior to the  
17          acceptance of any bid, disclose the amount of such unpaid common  
18          expenses in a manner reasonably designed to inform the bidders  
19          there and then present.

20          (c)    Nothing in this section shall release, or be deemed to  
21          release, the owner of an apartment from any liability for unpaid  
22          common expenses to the association of apartment owners.”

23          **Section 5. Severability.** Any provision of this Act held to be invalid  
24          or unenforceable by its terms or as applied to any person or circumstance,  
25          shall be construed so as to give it the maximum effect permitted by law  
26          unless such holding shall be one of utter invalidity or unenforceability, in  
27          which event, such provision shall be deemed severable herefrom and shall

1 not affect the remainder hereof or the application of such provision to other  
2 persons not similarly situated or to other dissimilar circumstances.

3 **Section 6. Effective Date.** Sections 2 and 3 of this Act shall go into  
4 full force and effect on the first day of the ninth (9<sup>th</sup>) month following its  
5 enactment. Any Assessment outstanding as of, or arising upon or after,  
6 this date shall be governed by the provisions of this Act. All other Sections  
7 of this Act shall go into full force and effect upon its enactment.

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