

By Senator Ring

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1 A bill to be entitled
2 An act relating to condominium and homeowners'
3 associations; amending s. 718.116, F.S.; providing
4 that a person acquiring title to a condominium by
5 foreclosure or recorded deed is liable for certain
6 additional unpaid expenses and assessments; clarifying
7 the definition of "successor or assignee"; requiring
8 that certain first mortgagees exercise property
9 preservation rights under certain circumstances;
10 authorizing a homeowners' association to preserve or
11 maintain the unit in a safe condition under certain
12 circumstances; requiring that certain costs incurred
13 by an association be deemed an individual assessment
14 against the unit being foreclosed; providing that a
15 first mortgagee is liable for certain special
16 assessments levied against a unit during the pendency
17 of a foreclosure action under certain circumstances;
18 authorizing an association to initiate certain causes
19 of action; authorizing an association to recover
20 reasonable attorney's fees incurred as a result of
21 pursuing certain causes of action; amending s.
22 720.3085, F.S.; providing that a first mortgagee is
23 liable for certain special assessments levied against
24 a unit during the pendency of a foreclosure action
25 under certain circumstances; requiring that certain
26 first mortgagees exercise property preservation rights
27 under certain circumstances; authorizing a homeowners'
28 association to preserve or maintain the unit in a safe
29 condition under certain circumstances; requiring that

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30 certain costs incurred by an association be deemed an
31 individual assessment against the unit being
32 foreclosed; providing an effective date.

34 Be It Enacted by the Legislature of the State of Florida:

36 Section 1. Paragraphs (b) and (g) of subsection (1) of
37 section 718.116, Florida Statutes, are amended, and paragraphs
38 (h), (i), and (j) are added to that subsection, to read:

39 718.116 Assessments; liability; lien and priority;
40 interest; collection.—

41 (1)

42 (b) The liability of a first mortgagee or its successor or
43 assignees who acquire title to a unit by foreclosure or by
44 recorded deed in lieu of foreclosure for the unpaid assessments
45 that became due before ~~prior to~~ the mortgagee's acquisition of
46 title is limited to the lesser of:

47 1. The unit's unpaid common expenses and regular periodic
48 assessments that ~~which~~ accrued or came due during the 12 ~~6~~
49 months immediately preceding the acquisition of title and for
50 which payment in full has not been received by the association;
51 or

52 2. One percent of the original mortgage debt. The
53 provisions of this paragraph apply only if the first mortgagee
54 joined the association as a defendant in the foreclosure action.
55 Joinder of the association is not required if, on the date the
56 complaint is filed, the association was dissolved or did not
57 maintain an office or agent for service of process at a location
58 which was known to or reasonably discoverable by the mortgagee.

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59 (g) For purposes of this subsection, the term "successor or
60 assignee" as used with respect to a first mortgagee includes
61 only a subsequent holder of the first mortgage who acquires the
62 first mortgage before any action to foreclose the first mortgage
63 is filed.

64 (h) In addition to the first mortgagee's obligations set
65 forth in paragraph (b), as to an individual unit, if the first
66 mortgagee institutes a foreclosure action against the unit
67 owner, the first mortgagee must exercise any property
68 preservation rights available under the mortgage being
69 foreclosed. If the first mortgagee fails to timely fulfill its
70 obligations under this section, the association may undertake
71 any reasonable action to otherwise preserve and maintain the
72 unit in a safe condition. Costs incurred by the association in
73 exercising this right shall be deemed an individual assessment
74 against the unit for which the association may pursue a lien or
75 foreclosure action.

76 (i) In addition to the first mortgagee's obligations set
77 forth in paragraph (b), if the first mortgagee institutes a
78 foreclosure action against the unit owner, the first mortgagee
79 is liable for any special assessments levied against the unit
80 during the pendency of such action for damage to the common
81 elements, roof, structural components of the building, and
82 mechanical, electrical, and plumbing elements serving the
83 building caused by windstorm, fire, or other casualty or act of
84 God, the purpose for which is to repair, restore, or replace the
85 common elements to pre-loss conditions, and which are needed to
86 pay for any deductibles or increase in the association's
87 casualty insurance premiums.

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88 (j) The association may bring an action in its name to
89 foreclose a lien for assessments in the same manner that a
90 mortgage of real property is foreclosed, as well as an action to
91 recover a monetary judgment for the unpaid assessments without
92 having any claim of lien. The association is entitled to recover
93 its reasonable attorney's fees incurred in a lien foreclosure
94 action or an action to recover a monetary judgment for unpaid
95 assessments.

96 Section 2. Subsection (2) of section 720.3085, Florida
97 Statutes, is amended to read:

98 720.3085 Payment for assessments; lien claims.—

99 (2) (a) A parcel owner, regardless of how his or her title
100 to property has been acquired, including by purchase at a
101 foreclosure sale or by deed in lieu of foreclosure, is liable
102 for all assessments that come due while he or she is the parcel
103 owner. The parcel owner's liability for assessments may not be
104 avoided by waiver or suspension of the use or enjoyment of any
105 common area or by abandonment of the parcel upon which the
106 assessments are made.

107 (b) A parcel owner is jointly and severally liable with the
108 previous parcel owner for all unpaid assessments that came due
109 up to the time of transfer of title. This liability is without
110 prejudice to any right the present parcel owner may have to
111 recover any amounts paid by the present owner from the previous
112 owner.

113 (c) Notwithstanding anything to the contrary contained in
114 this section, the liability of a first mortgagee, or its
115 successor or assignee as a subsequent holder of the first
116 mortgage who acquires title to a parcel by foreclosure or by

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117 recorded deed in lieu of foreclosure for the unpaid assessments
118 that became due before the mortgagee's acquisition of title,
119 shall be the lesser of:

120 1. The parcel's unpaid common expenses and regular periodic
121 or special assessments that accrued or came due during the 12
122 months immediately preceding the acquisition of title and for
123 which payment in full has not been received by the association;
124 or

125 2. One percent of the original mortgage debt.

126 (d) In addition to the first mortgagee's obligations set
127 forth in paragraph (c), if the first mortgagee institutes a
128 foreclosure action against the unit owner, the first mortgagee
129 is liable for any special assessments levied against the unit
130 during the pendency of such action for damage to the common
131 elements, roof, structural components of the building, and
132 mechanical, electrical, and plumbing elements serving the
133 building caused by windstorm, fire, or other casualty or act of
134 God, the purpose for which is to repair, restore, or replace the
135 common elements to pre-loss conditions, and which are needed to
136 pay for any deductibles or increase in the association's
137 casualty insurance premiums.

138 (e) In addition to the first mortgagee's obligations set
139 forth in paragraph (c), as to an individual unit, if the first
140 mortgagee institutes a foreclosure action against the unit
141 owner, the first mortgagee must exercise any property
142 preservation rights available under the mortgage being
143 foreclosed. If the first mortgagee fails to timely fulfill its
144 obligations under this section, the association may undertake
145 any reasonable action to otherwise preserve and maintain the

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146 unit in a safe condition. Costs incurred by the association in
147 exercising this right shall be deemed an individual assessment
148 against the unit for which the association may pursue a lien or
149 foreclosure action.

150

151 The limitations on first mortgagee liability provided in this
152 subsection ~~by this paragraph~~ apply only if the first mortgagee
153 filed suit against the parcel owner and initially joined the
154 association as a defendant in the mortgagee foreclosure action.
155 Joinder of the association is not required if, on the date the
156 complaint is filed, the association was dissolved or did not
157 maintain an office or agent for service of process at a location
158 that was known to or reasonably discoverable by the mortgagee.

159 Section 3. This act shall take effect July 1, 2010.