

By the Committee on Regulated Industries; and Senator Stargel

580-02898-14

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1 A bill to be entitled  
2 An act relating to residential properties; amending s.  
3 718.116, F.S.; defining the term "previous owner";  
4 revising and providing liability of certain  
5 condominium owners acquiring title; amending s.  
6 720.3085, F.S.; revising and providing liability of  
7 certain homeowners' association parcel owners  
8 acquiring title; providing an effective date.  
9

10 Be It Enacted by the Legislature of the State of Florida:  
11

12 Section 1. Paragraphs (a), (b), and (c) of subsection (1)  
13 of section 718.116, Florida Statutes, are amended to read:

14 718.116 Assessments; liability; lien and priority;  
15 interest; collection.—

16 (1) (a) A unit owner, regardless of how his or her title has  
17 been acquired, including by purchase at a foreclosure sale or by  
18 deed in lieu of foreclosure, is liable for all assessments which  
19 come due while he or she is the unit owner. Additionally, a unit  
20 owner is jointly and severally liable with the previous owner  
21 for all unpaid assessments that came due up to the time of  
22 transfer of title. For purposes of this paragraph, the term  
23 "previous owner" does not include an association that acquires  
24 title to a delinquent property through foreclosure or by deed in  
25 lieu of foreclosure. The present unit owner's liability for  
26 unpaid assessments is limited to any unpaid assessments that  
27 accrued before the association acquired title to the delinquent  
28 property through foreclosure or by deed in lieu of foreclosure.  
29 The present unit owner's payments shall be applied consistent

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30 with subsection (3). This liability is without prejudice to any  
31 right the owner may have to recover from the previous owner the  
32 amounts paid by the owner.

33 (b)1. The liability of a first mortgagee or its successor  
34 or assignees who acquire title to a unit by foreclosure or by  
35 deed in lieu of foreclosure for the unpaid assessments that  
36 became due before the mortgagee's acquisition of title is  
37 limited to the lesser of:

38 a. The unit's unpaid common expenses and regular periodic  
39 assessments and other costs that ~~which~~ accrued or came due  
40 pursuant to the association's governing documents during the 24  
41 ~~12~~ months immediately preceding the acquisition of title by the  
42 first mortgagee or the acquisition of title by the association,  
43 whichever occurs first, and for which payment in full has not  
44 been received by the association; or

45 b. Two ~~One~~ percent of the original mortgage debt if the  
46 titleholder was the first mortgagee who acquired title by  
47 foreclosure.

48 ~~2. The provisions of This subsection applies~~ paragraph  
49 ~~apply~~ only if the first mortgagee initially joined the  
50 association as a defendant in the foreclosure action. Joinder of  
51 the association is not required if, on the date the complaint is  
52 filed, the association was dissolved or did not maintain an  
53 office or agent for service of process at a location which was  
54 known to or reasonably discoverable by the mortgagee.

55 ~~3.2.~~ An association, or its successor or assignee, that  
56 acquires title to a unit through the foreclosure of its lien for  
57 assessments is not liable for any unpaid assessments, late fees,  
58 interest, or reasonable attorney ~~attorney's~~ fees and costs that

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59 came due before the association's acquisition of title in favor  
60 of any other association, as defined in s. 718.103(2) or s.  
61 720.301(9), which holds a superior lien interest on the unit.  
62 This subparagraph is intended to clarify existing law.

63 4. The liability of a first mortgagee or his or her  
64 successor or assignee who acquires title to a unit by  
65 foreclosure or by deed in lieu of foreclosure for attorney fees  
66 under this subsection is limited to \$4,000, unless a court of  
67 competent jurisdiction finds exceptional circumstances that  
68 justify a greater award.

69 (c) The person acquiring title shall pay the amount owed to  
70 the association within 30 days after transfer of title. Failure  
71 to pay the full amount when due shall entitle the association to  
72 record a claim of lien against the parcel and proceed in the  
73 same manner as provided in this section for the collection of  
74 the amount owed, any unpaid assessments, and other charges  
75 authorized by subsection (3) coming due after the acquisition of  
76 title.

77 Section 2. Paragraphs (a), (b), and (c) of subsection (2)  
78 of section 720.3085, Florida Statutes, are amended to read:

79 720.3085 Payment for assessments; lien claims.—

80 (2) (a) A parcel owner, regardless of how his or her title  
81 to property has been acquired, including by purchase at a  
82 foreclosure sale or by deed in lieu of foreclosure, is liable  
83 for all assessments that come due while he or she is the parcel  
84 owner. The parcel owner's liability for assessments may not be  
85 avoided by waiver or suspension of the use or enjoyment of any  
86 common area or by abandonment of the parcel upon which the  
87 assessments are made. A parcel owner's payments shall be applied

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88 pursuant to paragraph (3) (b).

89 (b) A parcel owner is jointly and severally liable with the  
90 previous parcel owner for all unpaid assessments that came due  
91 up to the time of transfer of title. This liability is without  
92 prejudice to any right the present parcel owner may have to  
93 recover any amounts paid by the present owner from the previous  
94 owner. For the purposes of this paragraph, the term "previous  
95 owner" does ~~shall~~ not include an association that acquires title  
96 to a delinquent property through foreclosure or by deed in lieu  
97 of foreclosure. The present parcel owner's liability for unpaid  
98 assessments is limited to any unpaid assessments that accrued  
99 before the association acquired title to the delinquent property  
100 through foreclosure or by deed in lieu of foreclosure. The  
101 present parcel owner's payments shall be applied pursuant to  
102 paragraph (3) (b).

103 (c)1. Notwithstanding anything to the contrary contained in  
104 this section, the liability of a first mortgagee, or his or her  
105 ~~its~~ successor or assignee as a subsequent holder of the first  
106 mortgage who acquires title to a parcel by foreclosure or by  
107 deed in lieu of foreclosure for the unpaid assessments that  
108 became due before the mortgagee's acquisition of title, shall be  
109 the lesser of:

110 a.1. The parcel's unpaid common expenses and regular  
111 periodic or special assessments and other costs that accrued or  
112 came due pursuant to the association's governing documents  
113 during the 24 ~~12~~ months immediately preceding the acquisition of  
114 title by a purchaser at a mortgage foreclosure sale or the  
115 acquisition of title by the association, whichever occurs first,  
116 and for which payment in full has not been received by the

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117 association; or

118 ~~b.2. Two~~ One percent of the original mortgage debt if the  
119 titleholder was the first mortgagee who acquired title by  
120 foreclosure.

121 2. The liability of a first mortgagee or his or her  
122 successor or assignee who acquires title to a parcel by  
123 foreclosure or by deed in lieu of foreclosure for attorney fees  
124 under this subsection is limited to \$4,000, unless a court of  
125 competent jurisdiction finds exceptional circumstances that  
126 justify a greater award.

127

128 The limitations on first mortgagee liability provided by this  
129 paragraph apply only if the first mortgagee filed suit against  
130 the parcel owner and initially joined the association as a  
131 defendant in the mortgagee foreclosure action. Joinder of the  
132 association is not required if, on the date the complaint is  
133 filed, the association was dissolved or did not maintain an  
134 office or agent for service of process at a location that was  
135 known to or reasonably discoverable by the mortgagee.

136 Section 3. This act shall take effect July 1, 2014.