

STORAGE NAME: h0177.rpp
DATE: February 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 177

RELATING TO: Condominium Association Liens

SPONSOR(S): Representative Tobin

STATUTE(S) AFFECTED: Section 718.116, Florida Statutes

COMPANION BILL(S): SB 200

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 177 provides that a portion of condominium association liens will have limited priority over other mortgages.

This bill will take effect October 1, 1997.

This bill does not cause a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

A condominium unit owner is liable for all assessments which come due while he is the unit owner.¹ Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title.

The association is restricted to enforcement methods provided by statute.² Delinquent payments may be assessed interest at a rate provided in the declaration (not to exceed the amount allowed by law), or at 18 percent per annum.³ The association may also levy reasonable late fees in accordance with its condominium documents.⁴ The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed.⁵ A personal judgment may be obtained by an association where a foreclosure fails to meet the owner's obligation to the association.⁶ An action to recover a money judgment for unpaid assessments,⁷ does not waive the lien the association has on each parcel⁸ for the unpaid assessments, interest, and reasonable attorney's fees.⁹

Section 718.116, Florida Statutes, limits the liability of a first mortgagee to the lesser of the regular assessments that were due during 6 months preceding acquisition of title, or one percent of the original mortgage debt.

¹FLA.STAT. 718.116(1).

²FLA. ADMIN.CODE ANN. r. 61B-23.005(4).

³FLA. STAT. 718.116(3).

⁴FLA. STAT. 718.116(3).

⁵FLA.STAT. 718.116(6)(a).

⁶May Marca Condo. Apts., Inc. v. O'Rourke, 6689 So.2d `089 (Fla. 4th DCA 1996).

⁷FLA. STAT. 718.116(6)(a).

⁸FLA. STAT. 718.103(10).

⁹FLA. STAT. 718.116(5)(a).

B. EFFECT OF PROPOSED CHANGES:

This bill attempts to provide limited priority over recorded mortgages for condominium association liens. See Comments section for technical concerns.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill attempts to give condominium association liens priority over first mortgages.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1.

This section provides for a condominium association to have a lien on units for unpaid assessments for common expenses. This section sets forth the procedure for creating the lien and the scope of the lien. A lien is created by recording the lien in the public records of the county in which the unit is located. The condominium association may secure a lien for unpaid assessments, the interest thereon, and attorney's fees.

HB 177 provides that a properly recorded lien entitles the association to limited priority over mortgages and other liens except property tax liens and federal tax liens. The limited priority applies when the amount of the lien does not exceed the aggregate customary condominium assessment for the 6-month period prior to the recordation of the lien. With respect to priority over mortgages, the limited priority only applies if the lien was recorded prior to the recordation of a lis pendens giving notice of a mortgage foreclosure action. If there is no lis pendens, the limited priority only applies where the lien has been recorded prior to receipt by the association of a summons that the unit is the subject of a mortgage foreclosure action.

When multiple assessment liens are filed, pursuant to HB 177, they may each have the limited priority. However, the multiple liens in aggregate must not exceed the aggregate customary condominium assessment against the unit owner for the 6 months prior to recordation of the liens. The priority granted to liens under this section is effective for 60 months from the time of recordation. Once an association has a lien which has priority under this section over a particular mortgage, the association cannot secure priority for any other liens over the same mortgage for 60 months.

This section requires an association recording a lien to notify first mortgage holders in writing, or make a good faith effort to do so. Lastly, the section provides a definition for customary condominium assessment.

Section 2

This section provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

This bill may affect lenders since it limits the priority of first mortgages.

2. Direct Private Sector Benefits:

This bill will enable associations to recover unpaid assessments from lenders rather than assessing remaining unit owners for the unpaid assessments.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

There are possible inconsistencies between current provisions of the statute and provisions which will be added by this bill. Currently in paragraph 5(a) of section 718.116 Florida Statutes, (1995), the association has a lien to secure "payment of assessments."

The scope of the lien is expanded in paragraph 5(b) to secure "all reasonable costs and attorney's fees incurred by the association incident to the collection process." In the paragraph created by this bill, reasonable attorney's fees are included in the lien "if authorized by the by-laws." Therefore, the statute as amended will have provisions which include attorney's fees in the lien without regard to the by-laws, and provisions which seemingly include attorney's fees only if authorized by the by-laws.

Another possible inconsistency surrounds the effective date of the lien. Currently in paragraph 5(a), a lien is effective from and relates back to the original recording of the original declaration of condominium except as to first mortgages of record. For that purpose, the lien is effective from the time of its recordation. In the provision to be added by this bill, the effective date of the lien is from the time of recordation of the lien. Therefore, existing provisions provide for two possible effective dates, and the provision to be added by the bill only provides for one.

Another possible inconsistency surrounds the duration of the lien. Currently in paragraph 5(a), a lien has an effective duration of 1 year unless certain contingencies occur. In the paragraph created by this bill, a lien is effective "from and after the time of recording." Therefore, the 1 year effective duration imposed in current provisions is seemingly not imposed in the paragraph created by this bill.

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The Department of Business & Professional Regulation pointed out that the bill provides that the association has a lien for any unpaid assessment for common expenses "or otherwise, together with interest thereon and, if authorized by the declaration or bylaws, reasonable attorney's fees." It is unclear what "or otherwise" means. The Department also noted conflicts with existing provisions of section 718.116, Florida Statutes. This could create difficulty in determining the legislative intent.

The Department of Banking & Finance has expressed a concern with this bill. It is their opinion that this bill may create some difficulty in obtaining mortgages, or that the rates for condominium mortgages will be greater than for other properties. It is the Department's position that the interests of the association do not outweigh the interests of the potential purchasers.

Finally, the question of retroactivity arises. It is unclear whether this bill is intended to affect the priority of liens for existing mortgages, or whether it would apply to mortgages obtained after the effective date of this act.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

P.K. Jameson

P.K. Jameson