

STORAGE NAME: h0177s1.rpp

DATE: April 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property & Probate
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 177

RELATING TO: Condominium Association Liens

SPONSOR(S): Committee On Real Property & Probate and 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 YEAS 4 NAYS 2

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I. SUMMARY:

CS/HB 177 provides that the liability of a first mortgagee or its successors or assignees, who acquire title to a condominium unit by foreclosure, or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title, is limited to the aggregate of the regular assessments that were due during the 6 months preceding acquisition of title, or two percent of the original mortgage debt; whichever is less.

The bill will take effect October 1, 1997.

The bill does not cause a fiscal impact.

II. SUBSTANTIVE RESEARCH:

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

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

B. EFFECT OF PROPOSED CHANGES:

CS/HB 177 provides that the liability of a first mortgagee is limited to the aggregate of the regular assessments that were due during the 6 months preceding acquisition of title, or **two** percent of the original mortgage debt; whichever is less.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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).

(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?

N/A

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 RESEARCH:

Section 1

This section amends section 718.116, Florida Statutes, which currently limits the liability of a first mortgagee of a condominium to the lesser of the aggregate of any unpaid regular assessments which came due during the 6 months preceding the acquisition of title, or **one** percent of the original mortgage debt. This section makes the first mortgagee of a condominium liable for the aggregate amount of unpaid regular assessments which came due during the 6 months preceding the acquisition of title, or **two** percent of the original mortgage debt; whichever is less.

Section 2

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

III. FISCAL RESEARCH & 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:

CS/HB 177 increases a lender's exposure regarding unpaid condominium assessments.

2. Direct Private Sector Benefits:

CS/HB 177 allows an association to recover from a lender, some or all of the unpaid condominium assessments, when a defaulting member's unit is foreclosed by a lender.

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

Unknown.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

It is unclear whether the provisions of this bill are intended to apply to any foreclosure after the effective date. If the provisions are intended to apply to any foreclosure after the effective date, the provisions of this bill may have the effect of retroactively modifying an obligation which was in place at the time a mortgage contract was entered into. Article 1, Section 10, of the State Constitution states "No bill of attainder, ex post facto law, or **law impairing the obligation of contracts shall be passed.**"

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

PCS/HB 177 provided that in the event of a foreclosure of a condominium by a lender, an association was entitled to the aggregate amount of unpaid regular assessments for the 6 months preceding a lender's acquisition of title. The PCS removed the existing cap of one percent of the original mortgage. Therefore, lenders were not able to quantify their exposure regarding unpaid assessments at the time of the lending decision. CS/HB 177 addresses this concern by providing that a lender's exposure regarding unpaid assessments may never exceed two percent of the original mortgage debt.

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VII. SIGNATURES:

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