

By Senator Campbell

33-335-98

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A bill to be entitled
An act relating to condominiums; amending s.
718.116, F.S.; providing that a certain amount
of condominium association liens shall have
limited priority over other mortgages;
providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (5) of
section 718.116, Florida Statutes, to read:

718.116 Assessments; liability; lien and priority;
interest; collection.--

(5)

(d)1. The association shall have a lien on each unit
for any unpaid assessment duly made by the association for a
share of common expenses or otherwise, together with interest
thereon and, if authorized by the declaration or bylaws,
reasonable attorney's fees. Such lien shall be effective from
and after the time of recording, in the public records of the
county in which the unit is located, of a claim of lien
stating the description of the unit, the name of the record
owner, the amount due, and the date when due. Such claim of
lien may include only sums that are due and payable when the
claim of lien is recorded and must be signed and verified by
an officer or agent of the association. Upon full payment of
all sums secured by the lien, the party making payment shall
be entitled to a recordable satisfaction of lien. Except as
set forth in subparagraph 2., all such liens are subordinate
to any lien for past due and unpaid property taxes, to the
lien of any mortgage to which the unit is subject, and to any

1 other lien recorded prior to the time of recording of the
2 claim of lien.

3 2. A lien recorded pursuant to subparagraph 1. shall
4 have a limited priority over prior recorded mortgages and
5 other liens, other than liens for unpaid property taxes or
6 federal taxes, to the extent provided in this paragraph. This
7 priority shall be limited as follows:

8 a. To a lien that is the result of customary
9 condominium assessments, the amount of which may not exceed
10 the aggregate customary condominium assessment against the
11 unit owner for the 6-month period prior to the recording of
12 the lien.

13 b. With respect to a particular mortgage, to a lien
14 recorded prior to:

15 (I) The receipt by the association of a summons and
16 complaint in an action to foreclose a mortgage on that unit;
17 or

18 (II) The filing with the proper county recording
19 office of a lis pendens giving notice of an action to
20 foreclose a mortgage on the unit.

21 c. If more than one association lien is filed because
22 an association files more than one lien or multiple
23 associations have filed liens, the total amount of the liens
24 granted priority may not be greater than the assessment for
25 the 6-month period specified in sub-subparagraph a. Priority
26 among multiple filings shall be determined by their date of
27 recording, with the earlier recorded liens having first use of
28 the priority given herein.

29 d. The priority granted to a lien pursuant to this
30 paragraph expires on the first day of the 60th month following
31 the date of recording of an association lien.

1 e. A lien of an association may not be granted
2 priority over a prior recorded mortgage or mortgages under
3 this paragraph if a prior recorded lien of the association for
4 unpaid assessments has obtained priority over the same
5 recorded mortgage or mortgages as provided in this paragraph
6 for a period of 60 months from the date of recording of the
7 lien granted priority.

8 f. When recording a lien that may be granted priority
9 pursuant to this paragraph, an association shall notify, in
10 writing, any holder of a first mortgage lien on the property
11 of the filing of the association lien. An association that
12 exercises a good-faith effort but is unable to ascertain the
13 identity of a holder of a prior recorded mortgage on the
14 property is deemed to be in substantial compliance with this
15 paragraph.

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17 As used in this paragraph, the term "customary condominium
18 assessment" means an assessment for periodic payments due the
19 association for regular and usual operating and common area
20 expenses pursuant to the association's annual budget and does
21 not include amounts for reserves for contingencies or any late
22 charges, penalties, or interest, or any fees or costs for the
23 collection or enforcement of the assessment or for any lien
24 arising from the assessment. The periodic payments must be
25 due monthly, or no less frequently than quarter-yearly, as may
26 be acceptable to the Federal National Mortgage Association, so
27 as not to disqualify an otherwise superior mortgage on the
28 condominium from purchase by the Federal National Mortgage
29 Association as a first mortgage.

30 Section 2. This act shall take effect October 1, 1998.

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SENATE SUMMARY

Provides that a described portion of condominium association liens has limited priority over other mortgages. (See bill for details.)