

STORAGE NAME: h1455z.rpp
DATE: May 15, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY AND PROBATE
FINAL ANALYSIS**

BILL #: HB 1455
RELATING TO: Condominiums/Unpaid Assessments
SPONSOR(S): Representative Ryan
TIED BILL(S): none

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

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

I. SUMMARY:

A purchaser of a condominium unit is jointly and severally liable with the previous owner of the condominium unit for all outstanding condominium association assessments which are due at the time of purchase. However, the liability of a first mortgagee, or its successor or assignee, who takes title by foreclosure or deed in lieu of foreclosure is limited to the lesser of 6 months assessments or 1 percent of the original mortgage balance; and in certain cases the first mortgagee, or its successor or assignee, has no liability for condominium association assessments due at the time of purchase.

This bill provides that the liability of a first mortgagee, or its successor or assignee, for outstanding condominium association assessments, for any mortgage recorded after April 1, 2001, is limited to the lesser of 9 months assessments or 2 percent of the original principal balance of the mortgage.

This bill may also affect the liability of a first mortgagee for unpaid condominium association assessments for some mortgages recorded prior to April 1, 2001; although the effect is unclear. See "Other Comments".

This bill does not appear to have a fiscal impact on state or local governments.

On May 5, 2000, HB 1455 died in the Committee on Real Property & Probate.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Current Law

Condominium units are assessed fees for maintenance of the common areas of the association. If an owner does not pay these fees, an association has a lien right in the owner's unit. An association can file a lien against a unit, and if that lien remains unpaid the association can sue to foreclose the lien.

A purchaser of a condominium unit is jointly and severally liable, with the previous owner of the condominium unit, to the condominium association for all assessments that were due from the previous owner.¹ However, when a first mortgagee or its successor² or assignee³ acquires title to a unit by foreclosure or by deed in lieu of foreclosure, the liability for prior condominium association assessments is limited. The extent of the limitation depends upon the provisions of the recorded declaration of condominium and when the mortgage was recorded.

If the mortgage was recorded prior to April 1, 1992, and the declaration of condominium does not include language incorporating by reference future amendments to Chapter 718, F.S., the first mortgagee or its successor or assignee is not liable for assessments that were due from the previous owner.⁴

If the mortgage was recorded prior to April 1, 1992, and the declaration of condominium includes language incorporating by reference future amendments to Chapter 718, F.S., the

¹ Section 718.116(1)(a), F.S. In practice, a purchaser at a regular sale would normally require the seller of the condominium unit to bring all association fees current.

² Black's Law Dictionary defines "successor" to mean: "One that succeeds or follows; one who takes that place that another has left, and sustains the like part or character, one who takes the place of another by succession . . . with reference to corporations, generally means another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with [the] rights and assumes [the] burdens of [the] first corporation."

³ Black's Law Dictionary defines "assignee" to mean: "A person to whom an assignment is made; grantee."

⁴ Section 718.116(1)(e), F.S.

first mortgagee or its successor or assignee is liable for assessments that were due from the previous owner, the lesser of:

1. Unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months prior to the date the first mortgagee takes title; or
2. One percent of the original principal amount of the mortgage.⁵

If the mortgage was recorded on or after April 1, 1992, and regardless of the provisions of the declaration of condominium, the first mortgagee or its successor or assignee is liable for assessments that were due from the previous owner, the lesser of:

1. Unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months prior to the date the first mortgagee takes title; or
2. One percent of the original principal amount of the mortgage.⁶

When any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located. See s. 718.115(1)(d), F.S.

Statutory History

The original condominium statute, Chapter 76-222, Laws of Florida, contained a limitation on the liability of a first mortgagee for unpaid condominium association assessments, stating in pertinent part:

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

(6) When the mortgagee of a first mortgage of record, or other purchaser, of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage . . . such acquirer of title and his successors and assigns shall not be liable for the share of common expenses or assessments by the association pertaining to the condominium parcel or chargeable to the former unit owner of the parcel which became due prior to acquisition of title as a result of the foreclosure
. . . .

In 1991, pursuant to CS/CS/HB 1465, Chapter 91-103, Laws of Florida, s. 718.116, F.S., was amended to read in pertinent part:

[A] first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is not liable for the share of common expenses or assessments attributable to the condominium parcel

⁵ Section 718.116(1)(b), F.S. This provision only applies if the condominium association is joined as a party in the foreclosure suit; except that joinder is not required if the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

⁶ *Id.*

The House of Representatives, Committee on Judiciary Final Analysis and Impact Statement on CS/CS/HB 1465, dated May 7, 1991, states in pertinent part:

Section 9 amends section 718.116, F.S., relating to assessments and liens. Subsection (1) addresses the issue of liability for unpaid assessments. Currently, when mortgagees of a first mortgage of record or other purchasers obtain title at a foreclosure sale, they are not liable for unpaid assessments prior to their acquisition of title. The other unit owners are then forced to absorb those costs for the unpaid assessments for the unit. Subsection (1) provides that mortgagee of a first mortgage of record continues to be exempt from liability for those assessments as long as the mortgagee either records a deed in lieu of foreclosure or institutes a foreclosure action within six months after the last payment received by the mortgagee. If the mortgagee fails to act within this six month period, the mortgagee's liability for unpaid assessments is limited to six months. . . . [The provision] is deleted which exempts the acquirer of title in a foreclosure action from unpaid assessments.

The current statutory language resulted from amendments made in 1994 pursuant to HB 2493, Chapter 94-350, Laws of Florida. The law reads in pertinent part, as amended:

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

(1)(a) A unit owner, regardless of how his title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he is the unit owner. 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. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(b) The liability of a first mortgagee or its successor or assignees who acquire title to a 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 lesser of:

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

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

. . .

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded,

the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

The House of Representatives, Committee on Judiciary, Final Analysis and Impact Statement on HB 2493, dated April 26, 1994, explains the changes to the statute:

Section 718.116, F.S., relates to the liability of a purchaser of a condominium unit for the unpaid assessments of the previous unit owner. It is reported that the language in this section is ambiguous in a number of respects and therefore has created difficulty for practitioners. The Condominium and Mortgage Law Committees of the Real Property Section of the Florida Bar have worked together to address the ambiguities in the statute and the language in the bill is the result of their joint efforts. . . . Section 10 amends section 718.116, F.S. to: clarify that the liability of a first mortgagee who acquires a title to a condominium unit is limited to the lesser of one percent of the original mortgage debt or the unpaid common expenses and regular periodic assessments which came due during the six months immediately preceding the acquisition of title; provide that a mortgagee must join the association as a defendant in the foreclosure action to take advantage of the limited liability provided in s. 718.116(1)(b), F.S.; provide that a person acquiring title must pay the amount due to the association within 30 days; clarify that the provisions relating to the liability of first mortgagees are only to be applied prospectively to first mortgages recorded after April 1, 1992 unless at the time the mortgage was recorded, the declaration included language incorporating future amendments to Chapter 718;

C. EFFECT OF PROPOSED CHANGES:

This effect of this bill depends upon the date that the mortgage was recorded and the provisions of the applicable declaration of condominium.

If the mortgage was recorded prior to April 1, 1992, and the declaration of condominium does not include language incorporating by reference future amendments to Chapter 718, F.S., the law is unchanged.

If the mortgage was recorded on or after April 1, 1992, and prior to April 1, 2001, and the declaration of condominium does not include language incorporating by reference future amendments to Chapter 718, F.S., the first mortgagee or its successor or assignee is liable for assessments that were due from the previous owner, the lesser of:

1. Unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months prior to the date the first mortgagee takes title; or
2. One percent of the original principal amount of the mortgage.⁷

If the mortgage is recorded on or after April 1, 2001, the first mortgagee or its successor or assignee is liable for assessments that were due from the previous owner, the lesser of:

⁷ *Id.*

1. Unpaid common expenses and regular periodic assessments which accrued or came due during the 9 months prior to the date the first mortgagee takes title; or
2. Two percent of the original principal amount of the mortgage.⁸

If the mortgage was recorded at any time prior to April 1, 2001, and the declaration of condominium includes language incorporating by reference future amendments to Chapter 718, F.S., the liability of the first mortgagee or its successor or assignee for assessments that were due from the previous owner, is unclear.

The effect of this bill in certain circumstances is unclear because provisions of this bill are inconsistent. See "Other Comments".

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes" herein.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may lower condominium association assessments to the extent that the limitations at s. 718.116(1)(b), F.S., or s. 718.116(1)(e), F.S., result in increased assessments to other association members pursuant to s. 718.115(1)(d), F.S.

This bill may increase the costs to mortgage lenders relating to foreclosure of a condominium unit.

⁸ *Id.*

D. FISCAL COMMENTS:

none

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

The provisions of this bill are inconsistent. If on the date the mortgage was recorded the declaration of condominium included language incorporating by reference future amendments to this chapter, at one point this bill would limit the liability of the first mortgagee to the lesser of 6 months condominium association assessments or 1 percent of the original mortgage balance; but the following sentence would limit the liability of the first mortgagee to the lesser of 9 months condominium association assessments or 2 percent of the original mortgage balance. These provisions are inconsistent.

Comments by Interested Parties

The Florida Banker's Association opposes this bill.⁹

⁹ Meeting with Anthony D'Marco, March 7, 2000.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

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