

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 680

SPONSOR: Senator Carlton

SUBJECT: Condominiums/Unpaid Assessments

DATE: January 11, 2000

REVISED: 3/7/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides that the exception for liability for prior unpaid assessments that s. 718.116, gives to a first mortgagee or its successor or assignee, as well as the provision relating to retroactive application of the assessment provisions, apply, at a foreclosure sale, only to a first mortgagee or its successor or assignee.

This bill substantially amends section 718.116 of the Florida Statutes.

II. Present Situation:

Section 718.116, F.S., provides that, with one exception, a condominium 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 exception is for "a first mortgagee or its successor or assignee" who acquires title by foreclosure action. The liability of such an entity is limited to the lesser of total unpaid common expenses and regular assessments for the 6 months immediately preceding the acquisition of title or one percent of the original mortgage debt.

"Successor" is defined by *Black's Law Dictionary* as ". . . one who takes the place that another has left, and sustains the like part or character . . ." *Black's* defines "assignee" as "a person to whom an assignment is made . . ." "Assignment" is defined as "a transfer or making over to another of the whole or any property, real or personal, . . . or of any estate or right therein. . . . It . . . is ordinarily limited to transfers of . . . rights in or connected with property, as distinguished from the particular item of property." Although no court has so held, it seems clear that a "successor or assignee" of a first mortgagee is a person who acquires an interest identical to the first mortgagee, no more, no less. This would include only a purchaser of the first mortgage, not a purchaser of the entire bundle of property rights at a foreclosure sale.

Nonetheless, according to an attorney who represents condominium associations, an argument has been made that a third party purchaser of a condominium unit at a foreclosure sale has the same

legal standing as a first mortgagee, and thus is entitled to the exception and limitation on liability for unpaid assessments set forth above. *Letter from Kevin Wells to Senator Lisa Carlton* (September 13, 1999). The argument is based on *Quinn Plumbing Company v. New Miami Shores Corporation*, 129 So. 690 (Fla. 1930). In *Quinn*, a first mortgage on real property was foreclosed and the property was sold. *Quinn*, at 690. The holder of a second mortgage on the property was not made a party to the foreclosure. *Id.* The purchaser in the foreclosure was a third party uninvolved with either mortgage. *Id.* The purchaser brought an action to dispose of the rights of the second mortgagee. *Id.* In determining the rights of the third party purchaser, the court stated:

It is well established in this jurisdiction that the purchaser of mortgaged property at a foreclosure sale, *when for any reason the foreclosure proceedings are imperfect or irregular*, becomes subrogated to all the rights of the mortgagee in such mortgage and to the indebtedness that it secured. Such purchaser becomes virtually an equitable assignee of the mortgage and of the debt it secured, with all rights of the original mortgagee
(*emphasis added*)

Id., at 692. No case has yet gone to judgment on this argument. According to Mr. Wells, he settled a case with which he was involved based on an expectation of losing and leaving the client in a worse position.

Section 718.116(1)(e), F.S., also contains provisions relating to the liability of a first mortgagee or its successor or assignee for prior unpaid assessments. This paragraph provides that if the first mortgage was recorded prior to April 1, 1992, the 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 is exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner that came due prior to acquisition of title, paragraphs (a) and (b) notwithstanding. If the first mortgage was recorded on or after April 1, 1992, or if on the date the mortgage was recorded the declaration of condominium included language incorporating by reference future amendments to this chapter, the provisions of paragraphs (a) and (b) do apply.

III. Effect of Proposed Changes:

The bill provides that, at a foreclosure sale, the exception from liability for prior unpaid assessments that paragraph (b) of s. 718.116, F.S., gives to a first mortgagee or its successor or assignee applies *only* to a first mortgagee or its successor or assignee.

Additionally, at a foreclosure sale, the provisions of paragraph (e) of s. 718.116, F.S., relating to retroactive application of the assessment provisions are made to apply only to a first mortgagee or its successor or assignee.

The bill takes effect October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The language of the bill is circular. The reported problem with the current statute is the interpretation of who is included within the class “a first mortgagee or its successor or assignee” and thus entitled to use the limitation on liability for prior unpaid assessments. To limit the application of these provisions by using this same language will not solve the problem.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Regulated Industries:

Restricts the use of the statutory limitation on liability by defining the category of persons who can use it instead of setting out those who cannot. (WITH TITLE AMENDMENT)

