

By Senator Lynn

7-00105-10

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1 A bill to be entitled
2 An act relating to the foreclosure of condominium
3 units; amending s. 718.116, F.S.; requiring a first
4 mortgagee to pay a certain portion of unpaid
5 assessments to the condominium association prior to
6 the transfer of title under certain circumstances;
7 providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsections (1) and (2) of section 718.116,
12 Florida Statutes, are amended to read:

13 718.116 Assessments; liability; lien and priority;
14 interest; collection.-

15 (1) ~~(a)~~ A unit owner, regardless of how his or her title is
16 ~~has been~~ acquired, including by purchase at a foreclosure sale
17 or by deed in lieu of foreclosure, is liable for all assessments
18 that ~~which~~ come due while he or she is the unit owner.

19 ~~Additionally,~~

20 (a) A unit owner is jointly and severally liable with the
21 previous owner for all unpaid assessments that came due up to
22 the time of transfer of title. This liability is without
23 prejudice to any right the owner may have to recover from the
24 previous owner the amounts paid by the owner.

25 ~~(b) The liability of a first mortgagee or its successor or~~
26 ~~assignees who acquire title to a unit by foreclosure or by deed~~
27 ~~in lieu of foreclosure for the unpaid assessments that became~~
28 ~~due prior to the mortgagee's acquisition of title is limited to~~
29 ~~the lesser of:~~

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

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

41 ~~(b)(e)~~ The person acquiring title shall pay the amount owed
42 to the association within 30 days after transfer of title.
43 Failure to pay the full amount when due entitles ~~shall entitle~~
44 the association to record a claim of lien against the parcel and
45 proceed in the same manner as provided in this section for the
46 collection of unpaid assessments.

47 ~~(c)(d)~~ With respect to each timeshare unit, each owner of a
48 timeshare estate ~~therein~~ is jointly and severally liable for the
49 payment of all assessments and other charges levied against or
50 with respect to that unit pursuant to the declaration or bylaws,
51 except to the extent that the declaration or bylaws may provide
52 to the contrary.

53 ~~(e)~~ Notwithstanding the provisions of paragraph (b), a
54 first mortgagee or its successor or assignees who acquire title
55 to a condominium unit as a result of the foreclosure of the
56 mortgage or by deed in lieu of foreclosure of the mortgage shall
57 be exempt from liability for all unpaid assessments attributable
58 to the parcel or chargeable to the previous owner which came due

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59 ~~prior to acquisition of title if the first mortgage was recorded~~
60 ~~prior to April 1, 1992. If, however, the first mortgage was~~
61 ~~recorded on or after April 1, 1992, or on the date the mortgage~~
62 ~~was recorded, the declaration included language incorporating by~~
63 ~~reference future amendments to this chapter, the provisions of~~
64 ~~paragraph (b) shall apply.~~

65 (d)~~(f)~~ The provisions of this subsection are intended to
66 clarify existing law, and are ~~shall~~ not be available if ~~in any~~
67 ~~case where~~ the unpaid assessments sought to be recovered by the
68 association are secured by a lien recorded prior to the
69 recording of the mortgage. Notwithstanding the provisions of
70 chapter 48, the association is ~~shall be~~ a proper party to
71 intervene in any foreclosure proceeding to seek equitable
72 relief.

73 ~~(g) For purposes of this subsection, the term "successor or~~
74 ~~assignee" as used with respect to a first mortgagee includes~~
75 ~~only a subsequent holder of the first mortgage.~~

76 (e)~~(2)~~ The liability for assessments may not be avoided by
77 waiver of the use or enjoyment of any common element or by
78 abandonment of the unit for which the assessments are made.

79 (2) The liability of a first mortgagee or its successor or
80 assignee who acquires title to a unit by foreclosure or by deed
81 in lieu of foreclosure for unpaid assessments that became due
82 before the mortgagee's acquisition of title is limited to the
83 lesser of the unit's unpaid common expenses and regular periodic
84 assessments which accrued or came due during the 6 months
85 immediately preceding the acquisition of title and for which
86 payment in full has not been received by the association, or 1
87 percent of the original mortgage debt.

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88 (a) If a first mortgagee or its successor or assignee has
89 not acquired title to an owner-occupied unit 6 months after the
90 date on which a foreclosure action is filed, at the option of
91 the association, the first mortgagee or its successor or
92 assignee shall pay to the association the lesser of the unit's
93 unpaid common expenses and regular periodic assessment which
94 accrued or came due during the 6 months or 1 percent of the
95 original mortgage debt within 30 days after the end of the 6
96 months. The liability of the first mortgagee or its successor or
97 assignee for all unpaid assessments when title to a unit is
98 acquired by foreclosure or by recorded deed in lieu of
99 foreclosure is limited to the payment required under this
100 paragraph. The association must return the amount paid if the
101 foreclosure proceeding is dismissed or rescinded.

102 (b) Unless the mortgage declaration included language
103 incorporating by reference future amendments to this chapter on
104 the date the mortgage was recorded, a first mortgagee or its
105 successor or assignees who acquire title to a condominium unit
106 is exempt from liability for all unpaid assessments attributable
107 to the parcel or chargeable to the previous owner which came due
108 before acquisition of title if the first mortgage was recorded
109 before April 1, 1992.

110 (c) The provisions of this paragraph apply only if the
111 first mortgagee joined the association as a defendant in the
112 foreclosure action. Joinder of the association is not required
113 if, on the date the complaint is filed, the association was
114 dissolved or did not maintain an office or agent for service of
115 process at a location that was known to or reasonably
116 discoverable by the mortgagee.

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117 (d) For purposes of this subsection, the term "successor or
118 assignee" includes only a subsequent holder of the first
119 mortgage.

120 Section 2. This act shall take effect July 1, 2010.