

By Senator Garcia

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1                                   A bill to be entitled  
2       An act relating to condominium foreclosures; amending  
3       s. 83.46, F.S.; providing legislative findings;  
4       authorizing a condominium association to demand  
5       payment from tenants of future rents to the  
6       association in lieu of payment to the unit owner;  
7       requiring that a tenant subject to such demand pay  
8       periodic rents until a delinquency in the payment of  
9       monetary obligations on behalf of a unit is satisfied  
10      and thereafter pay regular assessments until the  
11      occurrence of specified events; requiring that an  
12      association mail written notice of such demand to unit  
13      owners; providing that a tenant is not liable for  
14      increases in the amount of the monetary obligations  
15      due unless the tenant was reasonably notified of the  
16      increase before the day on which the rent is due to  
17      the unit owner; limiting the liability of a tenant for  
18      monetary obligations of the unit; requiring that a  
19      tenant's landlord provide the tenant with a credit  
20      against rent due under certain circumstances;  
21      requiring that a condominium association provide a  
22      tenant with written receipts for payments made upon  
23      request; clarifying that an association is not a  
24      landlord for purposes of specified provisions of state  
25      law; creating s. 627.714, F.S.; requiring that  
26      coverage under a unit owner's policy for certain  
27      assessments include at least a minimum amount of loss  
28      assessment coverage; requiring that each property  
29      insurance policy issued to an individual unit owner

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30 contain a specified provision; amending s. 718.106,  
31 F.S.; authorizing a condominium association to take  
32 certain actions if a unit is in foreclosure and more  
33 than 90 days delinquent in the payment of assessments;  
34 prohibiting an association from denying certain  
35 privileges to a tenant unless certain conditions exist  
36 before such denial; requiring that any moneys paid by  
37 a tenant to an association be credited to the  
38 landlord's account and against rent; amending s.  
39 718.111, F.S.; requiring that adequate property  
40 insurance be based upon the replacement cost of the  
41 property to be insured as determined by an independent  
42 appraisal or update of a prior appraisal; requiring  
43 that such replacement cost be determined at least once  
44 within a specified period; providing means by which an  
45 association may provide adequate property insurance;  
46 providing requirements for such coverage for a group  
47 of communities covering their probable maximum loss  
48 for a specified windstorm event; authorizing an  
49 association to consider deductibles when determining  
50 an adequate amount of property insurance; providing  
51 that failure to maintain adequate property insurance  
52 constitutes a breach of fiduciary duty by the members  
53 of the board of directors of an association; revising  
54 the procedures for the board to establish the amount  
55 of deductibles; requiring that an association  
56 controlled by unit owners operating as a residential  
57 condominium use its best efforts to obtain and  
58 maintain adequate property insurance to protect the

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59 association and certain property; requiring that every  
60 property insurance policy issued or renewed on or  
61 after a specified date provide certain coverage;  
62 excluding certain items from such requirement;  
63 providing that excluded items and any insurance  
64 thereupon are the responsibility of the unit owner;  
65 requiring that condominium unit owners' policies  
66 conform to certain provisions of state law; deleting  
67 provisions relating to certain hazard and casualty  
68 insurance policies; conforming provisions to changes  
69 made by the act; amending s. 718.116, F.S.;

70 authorizing the condominium's board of administration  
71 to accept a settlement from the first mortgagee or its  
72 successor or assignee a payment in full settlement of  
73 future monetary obligations which is less than the sum  
74 of assessments due; providing that such a settlement  
75 limits the obligations owed on behalf of the unit only  
76 under certain conditions; providing that certain  
77 monetary obligations of a unit owner are not affected  
78 by such a settlement; specifying additional  
79 circumstances for which liability for assessments may  
80 not be avoided; providing an effective date.

81  
82 Be It Enacted by the Legislature of the State of Florida:

83  
84 Section 1. Subsection (4) is added to section 83.46,  
85 Florida Statutes, to read:

86 83.46 Rent; duration of tenancies.—

87 (4) The Legislature finds that if a tenant is leasing a

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88 condominium unit, some typical duties of a landlord are provided  
89 by the condominium association. The Legislature also finds that  
90 a portion of the rent paid by a tenant in a condominium unit  
91 equitably belongs to the condominium association to pay for  
92 services provided by the association. The Legislature further  
93 finds that it is inequitable for a unit owner to receive the  
94 full rent from leasing a condominium unit while not paying  
95 assessments to the condominium association. The Legislature  
96 finds that it is necessary to the financial well-being of  
97 condominium associations to provide a means by which a  
98 condominium association may directly collect assessments from a  
99 tenant when a landlord fails to pay such assessments.

100 (a) If a condominium unit is subject to a rental agreement  
101 and is occupied by a tenant and the unit owner is delinquent in  
102 the payment of any monetary obligation due to the condominium  
103 association by 30 days or more, the association may demand that  
104 the tenant pay future rents to the association in lieu of  
105 payment to the unit owner. The tenant shall thereafter pay the  
106 periodic rents to the association until the delinquency is  
107 satisfied, after which time the tenant shall pay the regular  
108 condominium association assessment to the association and deduct  
109 the same from the periodic rent paid to the landlord unit owner  
110 until such time as the association releases the tenant from the  
111 demand or the tenant discontinues tenancy in the unit.

112 (b) The condominium association shall mail written notice  
113 to the unit owner of the association's demand that the tenant  
114 make payments to the association.

115 (c) If the tenant is paying the regular assessments, the  
116 tenant is not liable for increases in the amount of the monetary

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117 obligations due unless the tenant was reasonably notified of the  
118 increase before the day on which the rent is due to the unit  
119 owner.

120 (d) A tenant may not be required to pay more in the  
121 aggregate to the landlord and the association than the tenant  
122 owes in rent for the periods that the tenant is in actual  
123 possession of the condominium unit. The tenant's landlord shall  
124 provide the tenant a credit against rent due to the unit owner  
125 in the amount of moneys paid by the tenant to the association  
126 under this subsection.

127 (e) The condominium association shall, upon request,  
128 provide the tenant with written receipts for payments made  
129 pursuant to this subsection. However, the association is not  
130 otherwise considered a landlord under this chapter.

131 Section 2. Section 627.714, Florida Statutes, is created to  
132 read:

133 627.714 Residential condominium unit owner coverage; loss  
134 assessment coverage required; excess coverage provision  
135 required.—For policies issued or renewed on or after July 1,  
136 2010, coverage under a unit owner's residential property policy  
137 shall include property loss assessment coverage of at least  
138 \$2,000 for all assessments made as a result of the same direct  
139 loss to the property, regardless of the number of assessments,  
140 owned by all members of the association collectively when such  
141 loss is of the type of loss covered by the unit owner's  
142 residential property insurance policy to which a deductible  
143 shall apply of no more than \$250 per direct property loss. If a  
144 deductible was or will be applied to other property loss  
145 sustained by the unit owner resulting from the same direct loss

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146 to the property, no deductible shall apply to the loss  
147 assessment coverage. Every individual unit owner's residential  
148 property policy must contain a provision stating that the  
149 coverage afforded by such policy is excess coverage over the  
150 amount recoverable under any other policy covering the same  
151 property.

152 Section 3. Subsection (6) is added to section 718.106,  
153 Florida Statutes, to read:

154 718.106 Condominium parcels; appurtenances; possession and  
155 enjoyment.—

156 (6) Notwithstanding the provisions of this section, if a  
157 condominium unit is in foreclosure and the unit has unpaid  
158 assessments of 90 days or more, the association may, but is not  
159 required to, take one or more of the following actions:

160 (a) Deny any owner or tenant the right to occupy the  
161 condominium unit.

162 (b) Deny any owner or tenant of the unit the use of the  
163 common areas. However, this paragraph does not prevent any owner  
164 or tenant from using the common areas in order to leave the  
165 premises.

166 (c) Deny any owner or tenant of the unit use of  
167 recreational facilities.

168 (d) Deny any owner or tenant of the unit the use of a  
169 marina space, which may be enforced by towing of the vessel at  
170 the expense of the owner.

171 (e) Deny any owner of his or her voting rights.

172  
173 Notwithstanding any provision of this subsection, the  
174 association may deny a tenant the right to occupy the unit or

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175 the use of common areas, recreational facilities, or parking  
176 areas only if the association has made a demand for payment  
177 under s. 83.46(4) and the tenant is more than 30 days delinquent  
178 in payments required under that subsection. Any moneys paid by a  
179 tenant to the association shall be credited to the landlord's  
180 account with the condominium association and shall be credited  
181 against rent pursuant to s. 83.46(4).

182 Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j),  
183 and (n) of subsection (11) of section 718.111, Florida Statutes,  
184 are amended to read:

185 718.111 The association.—

186 (11) INSURANCE.—In order to protect the safety, health, and  
187 welfare of the people of the State of Florida and to ensure  
188 consistency in the provision of insurance coverage to  
189 condominiums and their unit owners, this subsection applies to  
190 every residential condominium in the state, regardless of the  
191 date of its declaration of condominium. It is the intent of the  
192 Legislature to encourage lower or stable insurance premiums for  
193 associations described in this subsection.

194 (a) Adequate property hazard insurance, regardless of any  
195 requirement in the declaration of condominium for coverage by  
196 the association for full insurable value, replacement cost, or  
197 similar coverage, shall be based upon the replacement cost of  
198 the property to be insured as determined by an independent  
199 insurance appraisal or update of a prior appraisal. The  
200 replacement cost ~~full insurable value~~ shall be determined at  
201 least once every 36 months.

202 1. An association or group of associations may provide  
203 adequate property hazard insurance through a self-insurance fund

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204 that complies with the requirements of ss. 624.460-624.488.

205       2. The association may also provide adequate property  
206 ~~hazard~~ insurance coverage for a group of no fewer than three  
207 communities created and operating under this chapter, chapter  
208 719, chapter 720, or chapter 721 by obtaining and maintaining  
209 for such communities insurance coverage sufficient to cover an  
210 amount equal to the probable maximum loss for the communities  
211 for a 250-year windstorm event. Such probable maximum loss must  
212 be determined through the use of a competent model that has been  
213 accepted by the Florida Commission on Hurricane Loss Projection  
214 Methodology. No policy or program providing such coverage shall  
215 be issued or renewed after July 1, 2008, unless it has been  
216 reviewed and approved by the Office of Insurance Regulation. The  
217 review and approval shall include approval of the policy and  
218 related forms pursuant to ss. 627.410 and 627.411, approval of  
219 the rates pursuant to s. 627.062, a determination that the loss  
220 model approved by the commission was accurately and  
221 appropriately applied to the insured structures to determine the  
222 250-year probable maximum loss, and a determination that  
223 complete and accurate disclosure of all material provisions is  
224 provided to condominium unit owners prior to execution of the  
225 agreement by a condominium association.

226       3. When determining the adequate amount of property ~~hazard~~  
227 insurance coverage, the association may consider deductibles as  
228 determined by this subsection.

229       (b) If an association is a developer-controlled  
230 association, the association shall exercise its best efforts to  
231 obtain and maintain insurance as described in paragraph (a).  
232 Failure to obtain and maintain adequate property ~~hazard~~



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233 insurance during any period of developer control constitutes a  
234 breach of fiduciary responsibility by the developer-appointed  
235 members of the board of directors of the association, unless the  
236 members can show that despite such failure, they have made their  
237 best efforts to maintain the required coverage.

238 (c) Policies may include deductibles as determined by the  
239 board.

240 1. The deductibles shall be consistent with industry  
241 standards and prevailing practice for communities of similar  
242 size and age, and having similar construction and facilities in  
243 the locale where the condominium property is situated.

244 2. The deductibles may be based upon available funds,  
245 including reserve accounts, or predetermined assessment  
246 authority at the time the insurance is obtained.

247 3. The board shall establish the amount of deductibles  
248 based upon the level of available funds and predetermined  
249 assessment authority at a meeting of the board. ~~Such meeting~~  
250 ~~shall be open to all unit owners~~ in the manner set forth in s.  
251 718.112(2)(e). ~~The notice of such meeting must state the~~  
252 ~~proposed deductible and the available funds and the assessment~~  
253 ~~authority relied upon by the board and estimate any potential~~  
254 ~~assessment amount against each unit, if any. The meeting~~  
255 ~~described in this paragraph may be held in conjunction with a~~  
256 ~~meeting to consider the proposed budget or an amendment thereto.~~

257 (d) An association controlled by unit owners operating as a  
258 residential condominium shall use its best efforts to obtain and  
259 maintain adequate property insurance to protect the association,  
260 the association property, the common elements, and the  
261 condominium property that is required to be insured by the

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262 association pursuant to this subsection.

263 (f) Every property hazard ~~hazard~~ insurance policy issued or  
264 renewed on or after January 1, 2009, for the purpose of  
265 protecting the condominium shall provide primary coverage for:

266 1. All portions of the condominium property as originally  
267 installed or replacement of like kind and quality, in accordance  
268 with the original plans and specifications.

269 2. All alterations or additions made to the condominium  
270 property or association property pursuant to s. 718.113(2).

271 3. The coverage shall exclude all personal property within  
272 the unit or limited common elements, and floor, wall, and  
273 ceiling coverings, electrical fixtures, appliances, water  
274 heaters, water filters, built-in cabinets and countertops, and  
275 window treatments, including curtains, drapes, blinds, hardware,  
276 and similar window treatment components, or replacements of any  
277 of the foregoing which are located within the boundaries of the  
278 unit and serve only such unit. Such property and any insurance  
279 thereupon shall be the responsibility of the unit owner.

280 (g) A condominium unit owner's policy shall conform to the  
281 requirements of s. 627.714. Every hazard insurance policy issued  
282 or renewed on or after January 1, 2009, to an individual unit  
283 owner must contain a provision stating that the coverage  
284 afforded by such policy is excess coverage over the amount  
285 recoverable under any other policy covering the same property.  
286 Such policies must include special assessment coverage of no  
287 less than \$2,000 per occurrence. An insurance policy issued to  
288 an individual unit owner providing such coverage does not  
289 provide rights of subrogation against the condominium  
290 association operating the condominium in which such individual's

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291 ~~unit is located.~~

292 ~~1. All improvements or additions to the condominium~~  
293 ~~property that benefit fewer than all unit owners shall be~~  
294 ~~insured by the unit owner or owners having the use thereof, or~~  
295 ~~may be insured by the association at the cost and expense of the~~  
296 ~~unit owners having the use thereof.~~

297 ~~2. The association shall require each owner to provide~~  
298 ~~evidence of a currently effective policy of hazard and liability~~  
299 ~~insurance upon request, but not more than once per year. Upon~~  
300 ~~the failure of an owner to provide a certificate of insurance~~  
301 ~~issued by an insurer approved to write such insurance in this~~  
302 ~~state within 30 days after the date on which a written request~~  
303 ~~is delivered, the association may purchase a policy of insurance~~  
304 ~~on behalf of an owner. The cost of such a policy, together with~~  
305 ~~reconstruction costs undertaken by the association but which are~~  
306 ~~the responsibility of the unit owner, may be collected in the~~  
307 ~~manner provided for the collection of assessments in s. 718.116.~~

308 ~~1.3.~~ All reconstruction work after a property ~~casualty~~ loss  
309 shall be undertaken by the association except as otherwise  
310 authorized in this section. A unit owner may undertake  
311 reconstruction work on portions of the unit with the prior  
312 written consent of the board of administration. However, such  
313 work may be conditioned upon the approval of the repair methods,  
314 the qualifications of the proposed contractor, or the contract  
315 that is used for that purpose. A unit owner shall obtain all  
316 required governmental permits and approvals prior to commencing  
317 reconstruction.

318 ~~2.4.~~ Unit owners are responsible for the cost of  
319 reconstruction of any portions of the condominium property for

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320 which the unit owner is required to carry property ~~casualty~~  
321 insurance, and any such reconstruction work undertaken by the  
322 association shall be chargeable to the unit owner and  
323 enforceable as an assessment pursuant to s. 718.116. ~~The~~  
324 ~~association must be an additional named insured and loss payee~~  
325 ~~on all casualty insurance policies issued to unit owners in the~~  
326 ~~condominium operated by the association.~~

327 3.5. A multicondominium association may elect, by a  
328 majority vote of the collective members of the condominiums  
329 operated by the association, to operate such condominiums as a  
330 single condominium for purposes of insurance matters, including,  
331 but not limited to, the purchase of the property hazard  
332 insurance required by this section and the apportionment of  
333 deductibles and damages in excess of coverage. The election to  
334 aggregate the treatment of insurance premiums, deductibles, and  
335 excess damages constitutes an amendment to the declaration of  
336 all condominiums operated by the association, and the costs of  
337 insurance shall be stated in the association budget. The  
338 amendments shall be recorded as required by s. 718.110.

339 (j) Any portion of the condominium property required to be  
340 insured by the association against property ~~casualty~~ loss  
341 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be  
342 reconstructed, repaired, or replaced as necessary by the  
343 association as a common expense. All property hazard insurance  
344 deductibles, uninsured losses, and other damages in excess of  
345 property hazard insurance coverage under the property hazard  
346 insurance policies maintained by the association are a common  
347 expense of the condominium, except that:

348 1. A unit owner is responsible for the costs of repair or

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349 replacement of any portion of the condominium property not paid  
350 by insurance proceeds, if such damage is caused by intentional  
351 conduct, negligence, or failure to comply with the terms of the  
352 declaration or the rules of the association by a unit owner, the  
353 members of his or her family, unit occupants, tenants, guests,  
354 or invitees, without compromise of the subrogation rights of any  
355 insurer ~~as set forth in paragraph (g)~~.

356 2. The provisions of subparagraph 1. regarding the  
357 financial responsibility of a unit owner for the costs of  
358 repairing or replacing other portions of the condominium  
359 property also apply to the costs of repair or replacement of  
360 personal property of other unit owners or the association, as  
361 well as other property, whether real or personal, which the unit  
362 owners are required to insure ~~under paragraph (g)~~.

363 3. To the extent the cost of repair or reconstruction for  
364 which the unit owner is responsible under this paragraph is  
365 reimbursed to the association by insurance proceeds, and, to the  
366 extent the association has collected the cost of such repair or  
367 reconstruction from the unit owner, the association shall  
368 reimburse the unit owner without the waiver of any rights of  
369 subrogation.

370 4. The association is not obligated to pay for  
371 reconstruction or repairs of property casualty losses as a  
372 common expense if the property casualty losses were known or  
373 should have been known to a unit owner and were not reported to  
374 the association until after the insurance claim of the  
375 association for that property casualty was settled or resolved  
376 with finality, or denied on the basis that it was untimely  
377 filed.

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378 (n) The association is not obligated to pay for any  
379 reconstruction or repair expenses due to property ~~casualty~~ loss  
380 to any improvements installed by a current or former owner of  
381 the unit or by the developer if the improvement benefits only  
382 the unit for which it was installed and is not part of the  
383 standard improvements installed by the developer on all units as  
384 part of original construction, whether or not such improvement  
385 is located within the unit. This paragraph does not relieve any  
386 party of its obligations regarding recovery due under any  
387 insurance implemented specifically for any such improvements.

388 Section 5. Section 718.116, Florida Statutes, is amended to  
389 read:

390 718.116 Assessments; liability; lien and priority;  
391 interest; collection; rent during foreclosure.-

392 (1) (a) A unit owner, regardless of how his or her title has  
393 been acquired, including by purchase at a foreclosure sale or by  
394 deed in lieu of foreclosure, is liable for all assessments which  
395 come due while he or she is the unit owner. Additionally, a unit  
396 owner is jointly and severally liable with the previous owner  
397 for all unpaid assessments that came due up to the time of  
398 transfer of title. This liability is without prejudice to any  
399 right the owner may have to recover from the previous owner the  
400 amounts paid by the owner.

401 (b) The liability of a first mortgagee or its successor or  
402 assignees who acquire title to a unit by foreclosure or by deed  
403 in lieu of foreclosure for the unpaid assessments that became  
404 due before ~~prior to~~ the mortgagee's acquisition of title is  
405 limited to the lesser of:

406 1. The unit's unpaid common expenses and regular periodic

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407 assessments which accrued or came due during the 6 months  
408 immediately preceding the acquisition of title and for which  
409 payment in full has not been received by the association; or

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

417 (c) The person acquiring title shall pay the amount owed to  
418 the association within 30 days after transfer of title. Failure  
419 to pay the full amount when due shall entitle the association to  
420 record a claim of lien against the parcel and proceed in the  
421 same manner as provided in this section for the collection of  
422 unpaid assessments.

423 (d) With respect to each timeshare unit, each owner of a  
424 timeshare estate therein is jointly and severally liable for the  
425 payment of all assessments and other charges levied against or  
426 with respect to that unit pursuant to the declaration or bylaws,  
427 except to the extent that the declaration or bylaws may provide  
428 to the contrary.

429 (e) Notwithstanding the provisions of paragraph (b), a  
430 first mortgagee or its successor or assignees who acquire title  
431 to a condominium unit as a result of the foreclosure of the  
432 mortgage or by deed in lieu of foreclosure of the mortgage shall  
433 be exempt from liability for all unpaid assessments attributable  
434 to the parcel or chargeable to the previous owner which came due  
435 prior to acquisition of title if the first mortgage was recorded

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436 prior to April 1, 1992. If, however, the first mortgage was  
437 recorded on or after April 1, 1992, or on the date the mortgage  
438 was recorded, the declaration included language incorporating by  
439 reference future amendments to this chapter, the provisions of  
440 paragraph (b) shall apply.

441 (f) The provisions of this subsection are intended to  
442 clarify existing law, and shall not be available in any case  
443 where the unpaid assessments sought to be recovered by the  
444 association are secured by a lien recorded prior to the  
445 recording of the mortgage. Notwithstanding the provisions of  
446 chapter 48, the association shall be a proper party to intervene  
447 in any foreclosure proceeding to seek equitable relief.

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

451 (h) If the assessments owed by a unit may, in the near  
452 future, be limited pursuant to paragraph (b), the board of  
453 administration may elect to negotiate with and accept from the  
454 first mortgagee or its successor or assignee a payment in full  
455 settlement of the future obligation which is less than the sum  
456 of such assessments as limited by paragraph (b). Such settlement  
457 shall limit the obligations on behalf of the unit only if the  
458 mortgagee or its successor or assignee acquires title to the  
459 unit in the foreclosure case pending at the time of the  
460 settlement. A settlement or agreement under this paragraph does  
461 not limit the amount due from a unit owner as prescribed in  
462 paragraph (a).

463 (2) The liability for assessments may not be avoided by  
464 waiver of the use or enjoyment of any common element, denial of



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465 the use or enjoyment of the unit, denial of the use or enjoyment  
466 of any common element, or ~~by~~ abandonment of the unit for which  
467 the assessments are made.

468 (3) Assessments and installments on them which are not paid  
469 when due bear interest at the rate provided in the declaration,  
470 from the due date until paid. This rate may not exceed the rate  
471 allowed by law, and, if no rate is provided in the declaration,  
472 interest shall accrue at the rate of 18 percent per year. Also,  
473 if the declaration or bylaws so provide, the association may  
474 charge an administrative late fee in addition to such interest,  
475 in an amount not to exceed the greater of \$25 or 5 percent of  
476 each installment of the assessment for each delinquent  
477 installment that the payment is late. Any payment received by an  
478 association shall be applied first to any interest accrued by  
479 the association, then to any administrative late fee, then to  
480 any costs and reasonable attorney's fees incurred in collection,  
481 and then to the delinquent assessment. The foregoing shall be  
482 applicable notwithstanding any restrictive endorsement,  
483 designation, or instruction placed on or accompanying a payment.  
484 A late fee shall not be subject to the provisions in chapter 687  
485 or s. 718.303(3).

486 (4) If the association is authorized by the declaration or  
487 bylaws to approve or disapprove a proposed lease of a unit, the  
488 grounds for disapproval may include, but are not limited to, a  
489 unit owner being delinquent in the payment of an assessment at  
490 the time approval is sought.

491 (5) (a) The association has a lien on each condominium  
492 parcel to secure the payment of assessments. Except as otherwise  
493 provided in subsection (1) and as set forth below, the lien is

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494 effective from and shall relate back to the recording of the  
495 original declaration of condominium, or, in the case of lien on  
496 a parcel located in a phase condominium, the last to occur of  
497 the recording of the original declaration or amendment thereto  
498 creating the parcel. However, as to first mortgages of record,  
499 the lien is effective from and after recording of a claim of  
500 lien in the public records of the county in which the  
501 condominium parcel is located. Nothing in this subsection shall  
502 be construed to bestow upon any lien, mortgage, or certified  
503 judgment of record on April 1, 1992, including the lien for  
504 unpaid assessments created herein, a priority which, by law, the  
505 lien, mortgage, or judgment did not have before that date.

506 (b) To be valid, a claim of lien must state the description  
507 of the condominium parcel, the name of the record owner, the  
508 name and address of the association, the amount due, and the due  
509 dates. It must be executed and acknowledged by an officer or  
510 authorized agent of the association. No such lien shall be  
511 effective longer than 1 year after the claim of lien was  
512 recorded unless, within that time, an action to enforce the lien  
513 is commenced. The 1-year period shall automatically be extended  
514 for any length of time during which the association is prevented  
515 from filing a foreclosure action by an automatic stay resulting  
516 from a bankruptcy petition filed by the parcel owner or any  
517 other person claiming an interest in the parcel. The claim of  
518 lien shall secure all unpaid assessments which are due and which  
519 may accrue subsequent to the recording of the claim of lien and  
520 prior to the entry of a certificate of title, as well as  
521 interest and all reasonable costs and attorney's fees incurred  
522 by the association incident to the collection process. Upon

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523 payment in full, the person making the payment is entitled to a  
524 satisfaction of the lien.

525 (c) By recording a notice in substantially the following  
526 form, a unit owner or the unit owner's agent or attorney may  
527 require the association to enforce a recorded claim of lien  
528 against his or her condominium parcel:

529 NOTICE OF CONTEST OF LIEN

530

531 TO: ... (Name and address of association)... You are  
532 notified that the undersigned contests the claim of lien filed  
533 by you on ....., ... (year)..., and recorded in Official Records  
534 Book .... at Page ....., of the public records of .... County,  
535 Florida, and that the time within which you may file suit to  
536 enforce your lien is limited to 90 days from the date of service  
537 of this notice. Executed this .... day of ....., ... (year)....

538

539 Signed: ... (Owner or Attorney)...

540

541 After notice of contest of lien has been recorded, the clerk of  
542 the circuit court shall mail a copy of the recorded notice to  
543 the association by certified mail, return receipt requested, at  
544 the address shown in the claim of lien or most recent amendment  
545 to it and shall certify to the service on the face of the  
546 notice. Service is complete upon mailing. After service, the  
547 association has 90 days in which to file an action to enforce  
548 the lien; and, if the action is not filed within the 90-day  
549 period, the lien is void. However, the 90-day period shall be  
550 extended for any length of time that the association is  
551 prevented from filing its action because of an automatic stay

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552 resulting from the filing of a bankruptcy petition by the unit  
553 owner or by any other person claiming an interest in the parcel.

554 (6) (a) The association may bring an action in its name to  
555 foreclose a lien for assessments in the manner a mortgage of  
556 real property is foreclosed and may also bring an action to  
557 recover a money judgment for the unpaid assessments without  
558 waiving any claim of lien. The association is entitled to  
559 recover its reasonable attorney's fees incurred in either a lien  
560 foreclosure action or an action to recover a money judgment for  
561 unpaid assessments.

562 (b) No foreclosure judgment may be entered until at least  
563 30 days after the association gives written notice to the unit  
564 owner of its intention to foreclose its lien to collect the  
565 unpaid assessments. If this notice is not given at least 30 days  
566 before the foreclosure action is filed, and if the unpaid  
567 assessments, including those coming due after the claim of lien  
568 is recorded, are paid before the entry of a final judgment of  
569 foreclosure, the association shall not recover attorney's fees  
570 or costs. The notice must be given by delivery of a copy of it  
571 to the unit owner or by certified or registered mail, return  
572 receipt requested, addressed to the unit owner at his or her  
573 last known address; and, upon such mailing, the notice shall be  
574 deemed to have been given, and the court shall proceed with the  
575 foreclosure action and may award attorney's fees and costs as  
576 permitted by law. The notice requirements of this subsection are  
577 satisfied if the unit owner records a notice of contest of lien  
578 as provided in subsection (5). The notice requirements of this  
579 subsection do not apply if an action to foreclose a mortgage on  
580 the condominium unit is pending before any court; if the rights

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581 of the association would be affected by such foreclosure; and if  
582 actual, constructive, or substitute service of process has been  
583 made on the unit owner.

584 (c) If the unit owner remains in possession of the unit  
585 after a foreclosure judgment has been entered, the court, in its  
586 discretion, may require the unit owner to pay a reasonable  
587 rental for the unit. If the unit is rented or leased during the  
588 pendency of the foreclosure action, the association is entitled  
589 to the appointment of a receiver to collect the rent. The  
590 expenses of the receiver shall be paid by the party which does  
591 not prevail in the foreclosure action.

592 (d) The association has the power to purchase the  
593 condominium parcel at the foreclosure sale and to hold, lease,  
594 mortgage, or convey it.

595 (7) A first mortgagee acquiring title to a condominium  
596 parcel as a result of foreclosure, or a deed in lieu of  
597 foreclosure, may not, during the period of its ownership of such  
598 parcel, whether or not such parcel is unoccupied, be excused  
599 from the payment of some or all of the common expenses coming  
600 due during the period of such ownership.

601 (8) Within 15 days after receiving a written request  
602 therefor from a unit owner or his or her designee, or a unit  
603 mortgagee or his or her designee, the association shall provide  
604 a certificate signed by an officer or agent of the association  
605 stating all assessments and other moneys owed to the association  
606 by the unit owner with respect to the condominium parcel.

607 (a) Any person other than the owner who relies upon such  
608 certificate shall be protected thereby.

609 (b) A summary proceeding pursuant to s. 51.011 may be

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610 brought to compel compliance with this subsection, and in any  
611 such action the prevailing party is entitled to recover  
612 reasonable attorney's fees.

613 (c) Notwithstanding any limitation on transfer fees  
614 contained in s. 718.112(2)(i), the association or its authorized  
615 agent may charge a reasonable fee for the preparation of the  
616 certificate. The amount of the fee must be included on the  
617 certificate.

618 (d) The authority to charge a fee for the certificate shall  
619 be established by a written resolution adopted by the board or  
620 provided by a written management, bookkeeping, or maintenance  
621 contract and is payable upon the preparation of the certificate.  
622 If the certificate is requested in conjunction with the sale or  
623 mortgage of a unit but the closing does not occur and no later  
624 than 30 days after the closing date for which the certificate  
625 was sought the preparer receives a written request, accompanied  
626 by reasonable documentation, that the sale did not occur from a  
627 payor that is not the unit owner, the fee shall be refunded to  
628 that payor within 30 days after receipt of the request. The  
629 refund is the obligation of the unit owner, and the association  
630 may collect it from that owner in the same manner as an  
631 assessment as provided in this section.

632 (9) (a) A unit owner may not be excused from payment of the  
633 unit owner's share of common expenses unless all other unit  
634 owners are likewise proportionately excluded from payment,  
635 except as provided in subsection (1) and in the following cases:

636 1. If authorized by the declaration, a developer who is  
637 offering units for sale may elect to be excused from payment of  
638 assessments against those unsold units for a stated period of

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639 time after the declaration is recorded. However, the developer  
640 must pay common expenses incurred during such period which  
641 exceed regular periodic assessments against other unit owners in  
642 the same condominium. The stated period must terminate no later  
643 than the first day of the fourth calendar month following the  
644 month in which the first closing occurs of a purchase contract  
645 for a unit in that condominium. If a developer-controlled  
646 association has maintained all insurance coverage required by s.  
647 718.111(11)(a), common expenses incurred during the stated  
648 period resulting from a natural disaster or an act of God  
649 occurring during the stated period, which are not covered by  
650 proceeds from insurance maintained by the association, may be  
651 assessed against all unit owners owning units on the date of  
652 such natural disaster or act of God, and their respective  
653 successors and assigns, including the developer with respect to  
654 units owned by the developer. In the event of such an  
655 assessment, all units shall be assessed in accordance with s.  
656 718.115(2).

657 2. A developer who owns condominium units, and who is  
658 offering the units for sale, may be excused from payment of  
659 assessments against those unsold units for the period of time  
660 the developer has guaranteed to all purchasers or other unit  
661 owners in the same condominium that assessments will not exceed  
662 a stated dollar amount and that the developer will pay any  
663 common expenses that exceed the guaranteed amount. Such  
664 guarantee may be stated in the purchase contract, declaration,  
665 prospectus, or written agreement between the developer and a  
666 majority of the unit owners other than the developer and may  
667 provide that, after the initial guarantee period, the developer

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668 may extend the guarantee for one or more stated periods. If a  
669 developer-controlled association has maintained all insurance  
670 coverage required by s. 718.111(11) (a), common expenses incurred  
671 during a guarantee period, as a result of a natural disaster or  
672 an act of God occurring during the same guarantee period, which  
673 are not covered by the proceeds from such insurance, may be  
674 assessed against all unit owners owning units on the date of  
675 such natural disaster or act of God, and their successors and  
676 assigns, including the developer with respect to units owned by  
677 the developer. Any such assessment shall be in accordance with  
678 s. 718.115(2) or (4), as applicable.

679 (b) If the purchase contract, declaration, prospectus, or  
680 written agreement between the developer and a majority of unit  
681 owners other than the developer provides for the developer to be  
682 excused from payment of assessments under paragraph (a), only  
683 regular periodic assessments for common expenses as provided for  
684 in the declaration and prospectus and disclosed in the estimated  
685 operating budget shall be used for payment of common expenses  
686 during any period in which the developer is excused.

687 Accordingly, no funds which are receivable from unit purchasers  
688 or unit owners and payable to the association, including capital  
689 contributions or startup funds collected from unit purchasers at  
690 closing, may be used for payment of such common expenses.

691 (c) If a developer of a multicondominium is excused from  
692 payment of assessments under paragraph (a), the developer's  
693 financial obligation to the multicondominium association during  
694 any period in which the developer is excused from payment of  
695 assessments is as follows:

696 1. The developer shall pay the common expenses of a



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697 condominium affected by a guarantee, including the funding of  
698 reserves as provided in the adopted annual budget of that  
699 condominium, which exceed the regular periodic assessments at  
700 the guaranteed level against all other unit owners within that  
701 condominium.

702 2. The developer shall pay the common expenses of a  
703 multicondominium association, including the funding of reserves  
704 as provided in the adopted annual budget of the association,  
705 which are allocated to units within a condominium affected by a  
706 guarantee and which exceed the regular periodic assessments  
707 against all other unit owners within that condominium.

708 (10) The specific purpose or purposes of any special  
709 assessment, including any contingent special assessment levied  
710 in conjunction with the purchase of an insurance policy  
711 authorized by s. 718.111(11), approved in accordance with the  
712 condominium documents shall be set forth in a written notice of  
713 such assessment sent or delivered to each unit owner. The funds  
714 collected pursuant to a special assessment shall be used only  
715 for the specific purpose or purposes set forth in such notice.  
716 However, upon completion of such specific purpose or purposes,  
717 any excess funds will be considered common surplus, and may, at  
718 the discretion of the board, either be returned to the unit  
719 owners or applied as a credit toward future assessments.

720 Section 6. This act shall take effect July 1, 2010.