

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Condominium Foreclosures
SPONSOR(S): Robaina; Roberson
TIED BILLS: None IDEN./SIM. BILLS: SB 2458

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 4 Y, 9 N, Bond, De La Paz.

SUMMARY ANALYSIS

Many condominium associations are suffering financial problems because unit owners are defaulting in their obligations owed to the association. When those units are sold at foreclosure, current law limits the mortgage lender's liability for payment of those past due assessments. This bill amends landlord-tenant law and condominium law to increase the opportunities for associations to collect assessments by providing that:

- The association may demand that a tenant of a delinquent unit owner pay rent directly to the association to be credited to the tenant's account with the landlord if the unit is 30 days or more delinquent.
The association may deny an owner or tenant occupancy of the unit and may deny use of common areas if the unit is 90 days or more delinquent. The denials do not apply to a bona fide tenant paying the association fees directly to the association.
A mortgage lender must pay a portion of past due assessments on the filing of a foreclosure action, and is fully liable for past due assessments owed by the mortgaged unit.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have significant private sector fiscal impacts.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.¹ Of great frustration to associations is situations

¹ See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis*

where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.²

Effect of Bill

Tenant Pays on 30 Days Delinquent

This bill amends s. 83.46, F.S., a part of the Residential Landlord-Tenant Act, to provide that, if assessments due from a condominium unit are more than 30 days delinquent, the association may demand that the tenant pay the association the total due to the association, but no more than the rent due to the landlord. Monies paid to the association are credited against rent owed to the landlord. The debt owed to the association must be paid first and in full before the tenant pays rent to the landlord. A tenant may not claim to have pre-paid rent unless the prepayment is part of the lease and can show proof of payment. If the tenant fails to pay after demand, the association may deny the tenant access to common facilities and may evict the tenant.

Denial of Occupancy or Use on 90 Days Delinquent

Section 718.106, F.S., requires a condominium association to allow a unit owner, or a tenant of a rented unit, to use the common areas of the condominium association. This bill amends s. 718.106, F.S., to provide that, if a unit owner is over 90 days delinquent, the association may deny the unit owner, or the unit owner's tenant, the right to:

- Occupy the condominium unit
- Use the common areas
- Use recreational facilities
- Use parking or marina spaces
- Vote in any election.

This bill also amends s. 718.116(2), F.S., to provide that denial of occupancy or use is not grounds for a reduction in the regular assessments.

However, if a tenant is paying a fair market rental rate and is paying all of said rent to the association, the association must allow the tenant to remain in the unit, and may use common areas, parking, and recreational facilities. Rent paid directly to the association must be credited by the landlord to the tenant's account.

Increased Lender Liability for Past Due Assessments

This bill amends s. 718.116, F.S., to require a lender seeking to file a foreclosure action involving a condominium unit must first request an estoppel letter from the association, which letter sets forth the current monthly maintenance amount and the sum of 6 months assessments. The association may charge up to \$50 for the letter, and must reply within 15 days. Within 30 days of the filing of the foreclosure action, the foreclosing lender must pay the association 6 months assessments, which sum is credited to the unit's account with the association.

If the foreclosure action is still pending on the one year anniversary of the filing of the action (defined as no certificate of title having been issued as of that anniversary), the foreclosing lender must pay to the association all outstanding monies owed by the unit and must pay future assessments as they come due.

Within State's Condo and HOA Population, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

² See s. 718.106(4), F.S.

If the foreclosing lender fails to make any payment owed to the association under these new requirements, the association may file for dismissal of the foreclosure action and may be awarded attorney's fees and costs for the motion.

Section 718.116, F.S., provides that a purchaser of a condominium unit is jointly and severally liable with the seller of the unit for all assessments due at the time of the sale or transfer. However, a first mortgagee, or the successor or assignee of the first mortgagee, who takes title pursuant to a foreclosure sale is only liable to the association for the lesser of the amount owed at the sale, 6 months assessments, or 1% of the original mortgage amount. This bill amends s. 718.116, F.S., to remove the limitations on the liability of a first mortgagee after foreclosure sale, making all purchasers of a condominium unit jointly and severally liable for all monies owed the association at the time of the sale or transfer.

B. SECTION DIRECTORY:

Section 1 amends s. 83.46, F.S., amending the Residential Landlord-Tenant Act to provide for payment of rent during foreclosure to a condominium association.

Section 2 amends s. 718.106, F.S., relating to use of common areas in condominium associations.

Section 3 amends s. 718.116, F.S., relating to assessments in a condominium association.

Section 4 provides an effective date of July 1, 2009.

II. 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 substantially increases the liability of mortgage lenders for past due assessments related to condominium units, and correspondingly substantially increases the likely collection rates for condominium associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may be advisable to amend the prohibitions on retaliatory conduct by a landlord pursuant to the Residential Landlord-Tenant Act, at s. 83.64, F.S., to prohibit retaliatory conduct against a tenant that complies with a lawful demand by a condominium association for payment of rents.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, March 1, 2010, and March 9, 2010, the Civil Justice & Courts Policy Committee adopted amendments to this bill. The amendments removed provisions that would have increased lender liability, clarified the process for collection from a tenant, and provided further tenant protections. After adoption of the amendments, the bill was reported unfavorably.