

1 A bill to be entitled
2 An act relating to condominium foreclosures; amending s.
3 83.46, F.S.; requiring certain condominium unit tenants to
4 pay moneys owed on behalf of the unit to the association;
5 providing liability; providing a tenant's obligations to
6 the association; amending s. 718.106, F.S.; providing
7 condominium associations with certain powers relating to
8 owners and tenants of a unit in foreclosure and more than
9 90 days delinquent; providing an exception for a tenant
10 who pays the rent directly to the association; amending s.
11 718.116, F.S.; requiring a mortgagee to request an
12 estoppel letter from an association prior to filing a
13 foreclosure action; authorizing the association to charge
14 a fee for the production of an estoppel letter; requiring
15 the association to reply to the letter within a specified
16 period of time; providing for dismissal of the action for
17 failure to request the letter or make payments; requiring
18 certain payments; deleting provisions limiting the
19 liability of the mortgagee and successors acquiring the
20 title by foreclosure or by deed in lieu of foreclosure for
21 certain unpaid assessments; deleting an exemption from
22 liability for certain unpaid assessments for certain
23 persons acquiring the title to a condominium as a result
24 of the foreclosure of the mortgage or by deed in lieu of
25 the foreclosure of the mortgage; deleting the definition
26 of the term "successor or assignee"; specifying additional
27 circumstances for which liability for assessments may not
28 be avoided; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Subsection (4) is added to section 83.46,
33 Florida Statutes, to read:

34 83.46 Rent; duration of tenancies.--

35 (4) (a) If assessments upon a condominium unit subject to a
36 rental agreement are delinquent for more than 30 days, the
37 association may require the tenant to pay the association any
38 moneys the unit owner landlord owes the association, not to
39 exceed the amount of moneys the tenant owes the unit owner
40 landlord during the pendency of the rental agreement. Any
41 payment made by the tenant to the association shall be credited
42 to the unit owner landlord's account with the condominium
43 association.

44 (b) If a unit is subject to a rental agreement, and if a
45 unit or the unit owner's monetary obligations to the association
46 become delinquent, the unit's tenant is jointly and severally
47 liable with the unit and unit owner for the unit and unit
48 owner's monetary obligations to the association.

49 1. The tenant's monetary obligations to the association
50 include, but are not limited to, all assessments and
51 installments, late charges, collection costs, attorney's fees
52 and court costs, and other monetary obligations from the unit
53 owner to the association, and any interest thereon, that come
54 due against the unit or the unit owner from the date of the
55 association's notice to the tenant, and accruing to the date all
56 the monetary obligations are paid in full, regardless of whether

57 the lease is terminated or otherwise concluded. In addition to
58 all other remedies, the association may enforce the tenant's
59 liability by evicting the tenant, either in the association's
60 name or in the name of the unit owner, and by suspending the
61 unit's right to utilize common elements other than those
62 necessary for ingress and egress.

63 2. The liability of a tenant is limited to the amount of
64 moneys due from the tenant to the unit owner. However, a
65 tenant's prepayment of a lease obligation does not excuse the
66 tenant for liability for the amount of the prepayment unless the
67 prepayment is either expressly stated in the lease or is for an
68 installment of monthly rent as expressly provided in the lease
69 and paid within 5 days after the installment due date, and the
70 tenant provides the association proof of payment in the form of
71 a canceled check.

72 3. Upon the association's notice to the tenant, the tenant
73 shall pay all moneys, whether as rent or otherwise, owed
74 pursuant to the lease, directly to the association until payment
75 of the monetary obligations due and accruing from the unit owner
76 to the association are paid in full, for which the unit owner,
77 contingent upon the unit owner's default, transfers, assigns,
78 conveys, sets over, and delivers to the association all moneys,
79 whether as rent or otherwise, owed under the lease with the
80 right, but without the obligation, to collect all of such moneys
81 that may come due under the lease.

82 Section 2. Subsection (6) is added to section 718.106,
83 Florida Statutes, to read:

84 718.106 Condominium parcels; appurtenances; possession and
 85 enjoyment.--

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

90 (a) Deny any owner or tenant the right to occupy the
 91 condominium unit.

92 (b) Deny any owner or tenant of the unit the use of the
 93 common areas. However, this paragraph shall not prevent any
 94 owner or tenant from using the common areas in order to leave
 95 the premises.

96 (c) Deny any owner or tenant of the unit use of
 97 recreational facilities.

98 (d) Deny any owner or tenant of the unit the use of a
 99 parking or marina space, which may be enforced by towing of the
 100 motor vehicle or vessel at the expense of the owner.

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

102
 103 Notwithstanding any provision of this subsection, if a tenant is
 104 paying a fair market rent and the tenant pays the entire rental
 105 amount due for a rental period to the association, the
 106 association may not deny the tenant under this subsection the
 107 right to occupy the unit, the use of common areas, the use of
 108 recreational facilities, or the use of parking areas during such
 109 rental period. Any rent paid by the tenant to the association
 110 shall be credited to the landlord's account with the condominium
 111 association for that unit pursuant to s. 83.46(4).

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112 Section 3. Subsections (1) and (2) of section 718.116,
113 Florida Statutes, are amended to read:

114 718.116 Assessments; liability; lien and priority;
115 interest; collection; rent during foreclosure.--

116 (1)(a) A unit owner, regardless of how his or her title
117 has been acquired, including by purchase at a foreclosure sale
118 or by deed in lieu of foreclosure, is liable for all assessments
119 which come due while he or she is the unit owner. Additionally,
120 a unit owner is jointly and severally liable with the previous
121 owner for all unpaid assessments that came due up to the time of
122 transfer of title. This liability is without prejudice to any
123 right the owner may have to recover from the previous owner the
124 amounts paid by the owner.

125 (b) Before a mortgagee of a loan secured by a lien on a
126 condominium unit may file an action for foreclosure of the
127 condominium unit, the mortgagee shall request an estoppel letter
128 from the association for which the association may charge \$50.
129 Failure to make such a request for an estoppel letter shall be
130 grounds for dismissal of the foreclosure action. The request
131 shall be in writing and shall indicate the name of the borrower
132 and the unit number. The association shall reply within 15 days
133 with an estoppel letter stating the current monthly maintenance
134 fee for the unit and the sum of 6 months' assessments. Within 30
135 days after the filing of the foreclosure action, the mortgagee
136 shall pay to the association the sum of 6 months' assessments as
137 indicated on the estoppel letter, which sum shall be credited to
138 the unit's account. On the first anniversary of the filing of
139 the foreclosure action, if the case is still pending without the

140 issuance of a certificate of title, regardless of cause, the
 141 mortgagee shall pay to the association all outstanding moneys
 142 owed by the unit as of that date and shall pay future
 143 assessments as they come due. Any payment to the association by
 144 the mortgagee shall be taxed as a cost in the foreclosure
 145 action, and the mortgagor shall be personally liable to the
 146 mortgagee for the value of the payment made to the association
 147 plus interest at the interest rate provided for in the
 148 promissory note for advances, all late charges, and attorney's
 149 fees. The court shall dismiss a foreclosure action when a
 150 plaintiff mortgagee has failed to make all monetary payments
 151 required by this subsection. Failure to make such payments shall
 152 result in the court awarding the association attorney's fees
 153 from the mortgagee. The liability of a first mortgagee or its
 154 successor or assignees who acquire title to a unit by
 155 foreclosure or by deed in lieu of foreclosure for the unpaid
 156 assessments that became due prior to the mortgagee's acquisition
 157 of title is limited to the lesser of:

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

162 ~~2. One percent of the original mortgage debt. The~~
 163 ~~provisions of this paragraph apply only if the first mortgagee~~
 164 ~~joined the association as a defendant in the foreclosure action.~~
 165 ~~Joinder of the association is not required if, on the date the~~
 166 ~~complaint is filed, the association was dissolved or did not~~

167 ~~maintain an office or agent for service of process at a location~~
 168 ~~which was known to or reasonably discoverable by the mortgagee.~~

169 (c) The person acquiring title shall pay the amount owed
 170 to the association within 30 days after transfer of title.
 171 Failure to pay the full amount when due shall entitle the
 172 association to record a claim of lien against the parcel and
 173 proceed in the same manner as provided in this section for the
 174 collection of unpaid assessments.

175 (d) With respect to each timeshare unit, each owner of a
 176 timeshare estate therein is jointly and severally liable for the
 177 payment of all assessments and other charges levied against or
 178 with respect to that unit pursuant to the declaration or bylaws,
 179 except to the extent that the declaration or bylaws may provide
 180 to the contrary.

181 ~~(e) Notwithstanding the provisions of paragraph (b), a~~
 182 ~~first mortgagee or its successor or assignees who acquire title~~
 183 ~~to a condominium unit as a result of the foreclosure of the~~
 184 ~~mortgage or by deed in lieu of foreclosure of the mortgage shall~~
 185 ~~be exempt from liability for all unpaid assessments attributable~~
 186 ~~to the parcel or chargeable to the previous owner which came due~~
 187 ~~prior to acquisition of title if the first mortgage was recorded~~
 188 ~~prior to April 1, 1992. If, however, the first mortgage was~~
 189 ~~recorded on or after April 1, 1992, or on the date the mortgage~~
 190 ~~was recorded, the declaration included language incorporating by~~
 191 ~~reference future amendments to this chapter, the provisions of~~
 192 ~~paragraph (b) shall apply.~~

193 (e) ~~(f)~~ The provisions of this subsection are intended to
 194 clarify existing law, and shall not be available in any case

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195 | where the unpaid assessments sought to be recovered by the
196 | association are secured by a lien recorded prior to the
197 | recording of the mortgage. Notwithstanding the provisions of
198 | chapter 48, the association shall be a proper party to intervene
199 | in any foreclosure proceeding to seek equitable relief.

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

203 | (2) The liability for assessments may not be avoided by
204 | waiver of the use or enjoyment of any common element, denial of
205 | the use or enjoyment of the unit, denial of the use or enjoyment
206 | of any common element, or ~~by~~ abandonment of the unit for which
207 | the assessments are made.

208 | Section 4. This act shall take effect July 1, 2010.