

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 633.0215, F.S.; providing an exemption, if certain
4 conditions are met, from the requirement that certain
5 condominiums install a manual fire alarm system as
6 required in the Life Safety Code; amending s. 718.112,
7 F.S.; prohibiting an authority having jurisdiction from
8 requiring the completion of retrofitting of common areas
9 with a sprinkler system before a specified date; providing
10 that certain condominiums need not retrofit the inside of
11 units with fire alarm systems or smoke-detection systems;
12 amending s. 718.116, F.S.; providing that a person
13 acquiring title to a condominium by foreclosure or
14 recorded deed is liable for certain additional unpaid
15 expenses and assessments; clarifying the definition of
16 "successor or assignee"; requiring that certain first
17 mortgagees exercise property preservation rights under
18 certain circumstances; authorizing a homeowners'
19 association to preserve or maintain the unit in a safe
20 condition under certain circumstances; requiring that
21 certain costs incurred by an association be deemed an
22 individual assessment against the unit being foreclosed;
23 providing that a first mortgagee is liable for certain
24 special assessments levied against a unit during the
25 pendency of a foreclosure action under certain
26 circumstances; authorizing an association to initiate
27 certain causes of action; authorizing an association to
28 recover reasonable attorney's fees incurred as a result of

29 | pursuing certain causes of action; amending s. 720.3085,
 30 | F.S.; providing that a first mortgagee is liable for
 31 | certain special assessments levied against a unit during
 32 | the pendency of a foreclosure action under certain
 33 | circumstances; requiring that certain first mortgagees
 34 | exercise property preservation rights under certain
 35 | circumstances; authorizing a homeowners' association to
 36 | preserve or maintain the unit in a safe condition under
 37 | certain circumstances; requiring that certain costs
 38 | incurred by an association be deemed an individual
 39 | assessment against the unit being foreclosed; creating s.
 40 | 720.314, F.S.; defining the term "common area facilities"
 41 | for specified purposes; authorizing a condominium or
 42 | homeowners' association to disallow the use of common area
 43 | facilities by unit owners who are delinquent in the
 44 | payment of association fees by more than a specified
 45 | number of days; repealing s. 553.509(2), F.S., relating to
 46 | a requirement that public elevators capable of operating
 47 | from an alternate power source be installed in certain
 48 | multifamily dwellings or condominiums; providing an
 49 | effective date.

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |
 53 | Section 1. Subsection (13) is added to section 633.0215,
 54 | Florida Statutes, to read:

55 | 633.0215 Florida Fire Prevention Code.—

56 | (13) A condominium that is one or two stories in height

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57 and that has a corridor providing an exterior means of egress is
58 exempt from the requirement to install a manual fire alarm
59 system, as required in s. 9.6 of the most recent edition of the
60 Life Safety Code adopted in the Florida Fire Prevention Code.

61 Section 2. Paragraph (1) of subsection (2) of section
62 718.112, Florida Statutes, is amended to read:

63 718.112 Bylaws.—

64 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
65 following and, if they do not do so, shall be deemed to include
66 the following:

67 (1) Certificate of compliance.—There shall be a provision
68 that a certificate of compliance from a licensed electrical
69 contractor or electrician may be accepted by the association's
70 board as evidence of compliance of the condominium units with
71 the applicable fire and life safety code. Notwithstanding the
72 provisions of chapter 633 or of any other code, statute,
73 ordinance, administrative rule, or regulation, or any
74 interpretation of the foregoing, an association, condominium, or
75 unit owner is not obligated to retrofit the common elements or
76 units of a residential condominium with a fire sprinkler system
77 or other engineered lifesafety system in a building that has
78 been certified for occupancy by the applicable governmental
79 entity, if the unit owners have voted to forego such
80 retrofitting and engineered lifesafety system by the affirmative
81 vote of two-thirds of all voting interests in the affected
82 condominium. However, a condominium association may not vote to
83 forego the retrofitting with a fire sprinkler system of common
84 areas in a high-rise building. For purposes of this subsection,

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85 the term "high-rise building" means a building that is greater
86 than 75 feet in height where the building height is measured
87 from the lowest level of fire department access to the floor of
88 the highest occupiable story. For purposes of this subsection,
89 the term "common areas" means any enclosed hallway, corridor,
90 lobby, stairwell, or entryway. In no event shall the local
91 authority having jurisdiction require completion of retrofitting
92 of common areas with a sprinkler system before the end of 2019
93 2014. A condominium that has 1 1/2 hour or higher fire-rated
94 walls and that is not a high-rise building need not retrofit the
95 inside of units with fire alarm systems or smoke-detection
96 systems.

97 1. A vote to forego retrofitting may be obtained by
98 limited proxy or by a ballot personally cast at a duly called
99 membership meeting, or by execution of a written consent by the
100 member, and shall be effective upon the recording of a
101 certificate attesting to such vote in the public records of the
102 county where the condominium is located. The association shall
103 mail, hand deliver, or electronically transmit to each unit
104 owner written notice at least 14 days prior to such membership
105 meeting in which the vote to forego retrofitting of the required
106 fire sprinkler system is to take place. Within 30 days after the
107 association's opt-out vote, notice of the results of the opt-out
108 vote shall be mailed, hand delivered, or electronically
109 transmitted to all unit owners. Evidence of compliance with this
110 30-day notice shall be made by an affidavit executed by the
111 person providing the notice and filed among the official records
112 of the association. After such notice is provided to each owner,

113 a copy of such notice shall be provided by the current owner to
 114 a new owner before ~~prior to~~ closing and shall be provided by a
 115 unit owner to a renter before ~~prior to~~ signing a lease.

116 2. As part of the information collected annually from
 117 condominiums, the division shall require condominium
 118 associations to report the membership vote and recording of a
 119 certificate under this subsection and, if retrofitting has been
 120 undertaken, the per-unit cost of such work. The division shall
 121 annually report to the Division of State Fire Marshal of the
 122 Department of Financial Services the number of condominiums that
 123 have elected to forego retrofitting.

124 Section 3. Paragraphs (b) and (g) of subsection (1) of
 125 section 718.116, Florida Statutes, are amended, and paragraphs
 126 (h), (i), and (j) are added to that subsection, to read:

127 718.116 Assessments; liability; lien and priority;
 128 interest; collection.-

129 (1)

130 (b) The liability of a first mortgagee or its successor or
 131 assignees who acquire title to a unit by foreclosure or by
 132 recorded deed in lieu of foreclosure for the unpaid assessments
 133 that became due before ~~prior to~~ the mortgagee's acquisition of
 134 title is limited to the lesser of:

135 1. The unit's unpaid common expenses and regular periodic
 136 assessments that ~~which~~ accrued or came due during the 12 ~~6~~
 137 months immediately preceding the acquisition of title and for
 138 which payment in full has not been received by the association;
 139 or

140 2. One percent of the original mortgage debt. The

141 provisions of this paragraph apply only if the first mortgagee
 142 joined the association as a defendant in the foreclosure action.
 143 Joinder of the association is not required if, on the date the
 144 complaint is filed, the association was dissolved or did not
 145 maintain an office or agent for service of process at a location
 146 which was known to or reasonably discoverable by the mortgagee.

147 (g) For purposes of this subsection, the term "successor
 148 or assignee" as used with respect to a first mortgagee includes
 149 only a subsequent holder of the first mortgage who acquires the
 150 first mortgage before any action to foreclose the first mortgage
 151 is filed.

152 (h) In addition to the first mortgagee's obligations set
 153 forth in paragraph (b), as to an individual unit, if the first
 154 mortgagee institutes a foreclosure action against the unit
 155 owner, the first mortgagee must exercise any property
 156 preservation rights available under the mortgage being
 157 foreclosed. If the first mortgagee fails to timely fulfill its
 158 obligations under this section, the association may undertake
 159 any reasonable action to otherwise preserve and maintain the
 160 unit in a safe condition. Costs incurred by the association in
 161 exercising this right shall be deemed an individual assessment
 162 against the unit for which the association may pursue a lien or
 163 foreclosure action.

164 (i) In addition to the first mortgagee's obligations set
 165 forth in paragraph (b), if the first mortgagee institutes a
 166 foreclosure action against the unit owner, the first mortgagee
 167 is liable for any special assessments levied against the unit
 168 during the pendency of such action for damage to the common

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169 elements, roof, structural components of the building, and
170 mechanical, electrical, and plumbing elements serving the
171 building caused by windstorm, fire, or other casualty or act of
172 God, the purpose for which is to repair, restore, or replace the
173 common elements to pre-loss conditions, and which are needed to
174 pay for any deductibles or increase in the association's
175 casualty insurance premiums.

176 (j) The association may bring an action in its name to
177 foreclose a lien for assessments in the same manner that a
178 mortgage of real property is foreclosed, as well as an action to
179 recover a monetary judgment for the unpaid assessments without
180 having any claim of lien. The association is entitled to recover
181 its reasonable attorney's fees incurred in a lien foreclosure
182 action or an action to recover a monetary judgment for unpaid
183 assessments.

184 Section 4. Subsection (2) of section 720.3085, Florida
185 Statutes, is amended to read:

186 720.3085 Payment for assessments; lien claims.—

187 (2) (a) A parcel owner, regardless of how his or her title
188 to property has been acquired, including by purchase at a
189 foreclosure sale or by deed in lieu of foreclosure, is liable
190 for all assessments that come due while he or she is the parcel
191 owner. The parcel owner's liability for assessments may not be
192 avoided by waiver or suspension of the use or enjoyment of any
193 common area or by abandonment of the parcel upon which the
194 assessments are made.

195 (b) A parcel owner is jointly and severally liable with
196 the previous parcel owner for all unpaid assessments that came

197 due up to the time of transfer of title. This liability is
 198 without prejudice to any right the present parcel owner may have
 199 to recover any amounts paid by the present owner from the
 200 previous owner.

201 (c) Notwithstanding anything to the contrary contained in
 202 this section, the liability of a first mortgagee, or its
 203 successor or assignee as a subsequent holder of the first
 204 mortgage who acquires title to a parcel by foreclosure or by
 205 recorded deed in lieu of foreclosure for the unpaid assessments
 206 that became due before the mortgagee's acquisition of title,
 207 shall be the lesser of:

208 1. The parcel's unpaid common expenses and regular
 209 periodic or special assessments that accrued or came due during
 210 the 12 months immediately preceding the acquisition of title and
 211 for which payment in full has not been received by the
 212 association; or

213 2. One percent of the original mortgage debt.

214 (d) In addition to the first mortgagee's obligations set
 215 forth in paragraph (c), if the first mortgagee institutes a
 216 foreclosure action against the unit owner, the first mortgagee
 217 is liable for any special assessments levied against the unit
 218 during the pendency of such action for damage to the common
 219 elements, roof, structural components of the building, and
 220 mechanical, electrical, and plumbing elements serving the
 221 building caused by windstorm, fire, or other casualty or act of
 222 God, the purpose for which is to repair, restore, or replace the
 223 common elements to pre-loss conditions, and which are needed to
 224 pay for any deductibles or increase in the association's

225 casualty insurance premiums.

226 (e) In addition to the first mortgagee's obligations set
 227 forth in paragraph (c), as to an individual unit, if the first
 228 mortgagee institutes a foreclosure action against the unit
 229 owner, the first mortgagee must exercise any property
 230 preservation rights available under the mortgage being
 231 foreclosed. If the first mortgagee fails to timely fulfill its
 232 obligations under this section, the association may undertake
 233 any reasonable action to otherwise preserve and maintain the
 234 unit in a safe condition. Costs incurred by the association in
 235 exercising this right shall be deemed an individual assessment
 236 against the unit for which the association may pursue a lien or
 237 foreclosure action.

238
 239 The limitations on first mortgagee liability provided in this
 240 subsection ~~by this paragraph~~ apply only if the first mortgagee
 241 filed suit against the parcel owner and initially joined the
 242 association as a defendant in the mortgagee foreclosure action.
 243 Joinder of the association is not required if, on the date the
 244 complaint is filed, the association was dissolved or did not
 245 maintain an office or agent for service of process at a location
 246 that was known to or reasonably discoverable by the mortgagee.

247 Section 5. Section 720.314, Florida Statutes, is created
 248 to read:

249 720.314 Common area facilities; restriction of use.-

250 (1) For purposes of this section, the term "common area
 251 facilities" includes, but is not limited to, any clubhouse,
 252 entertainment facility, exercise facility, swimming pool, tennis

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253 court, or other recreation area owned or maintained by a
254 homeowners' or condominium association and provided for use by
255 dues-paying members of such association.

256 (2) A condominium association or homeowners' association
257 may disallow the use of common area facilities by unit owners
258 who are delinquent in the payment of association fees by more
259 than 90 days.

260 Section 6. Subsection (2) of section 553.509, Florida
261 Statutes, is repealed.

262 Section 7. This act shall take effect July 1, 2010.