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2011

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 718.111, F.S.; requiring an insurance company insuring
4 condominium association property to provide notice to unit
5 owners if the insurance will be cancelled or not renewed
6 by the association; authorizing a majority of the voting
7 interests of the association to direct the board to obtain
8 substitute coverage; amending s. 718.113, F.S.;
9 authorizing the board of a condominium association to
10 install impact glass or other code-compliant windows under
11 certain circumstances; amending s. 718.116, F.S.;
12 providing that a condominium association may not be deemed
13 to be the previous owner of a condominium unit under
14 certain circumstances; requiring a tenant to pay all of a
15 unit owner's outstanding monetary obligations relating to
16 the unit to the condominium association under certain
17 circumstances; amending s. 720.303, F.S.; providing that a
18 member of a homeowners' association has the right to speak
19 on any matter placed on the agenda of the board of the
20 association for at least 3 minutes; amending s. 720.306,
21 F.S.; specifying additional requirements for elections for
22 members of the board of a homeowners' association;
23 specifying additional requirements for candidates to be a
24 member of the board of a homeowners' association; amending
25 s. 720.3085, F.S.; providing that a condominium
26 homeowners' association may not be deemed to be the
27 previous owner of a parcel under certain circumstances;
28 providing an effective date.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

Section 1. Paragraph (d) of subsection (11) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

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

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection. However, if an association having 50 or fewer units cancels or does not renew insurance coverage required or permitted under this subsection, the insurance company must notify all unit owners by certified and regular mail at least 30 days before the effective date of a termination of coverage. Upon receipt of the notice, a majority of the voting interests may agree in writing to direct the board to obtain substitute coverage for the association as a common expense.

57 Section 2. Subsection (5) of section 718.113, Florida
 58 Statutes, is amended to read:

59 718.113 Maintenance; limitation upon improvement; display
 60 of flag; hurricane shutters; display of religious decorations.—

61 (5) Each board of administration shall adopt hurricane
 62 shutter specifications for each building within each condominium
 63 operated by the association which shall include color, style,
 64 and other factors deemed relevant by the board. All
 65 specifications adopted by the board must ~~shall~~ comply with the
 66 applicable building code.

67 (a) The board may, subject to the provisions of s.
 68 718.3026, and the approval of a majority of voting interests of
 69 the condominium, install hurricane shutters, impact glass or
 70 other code-compliant windows, or hurricane protection that
 71 complies with or exceeds the applicable building code. However,
 72 ~~or both, except that~~ a vote of the owners is not required if the
 73 maintenance, repair, and replacement of hurricane shutters,
 74 impact glass, or other code-compliant windows ~~or other forms of~~
 75 ~~hurricane protection~~ are the responsibility of the association
 76 pursuant to the declaration of condominium. If ~~However,~~ where
 77 hurricane protection or laminated glass or window film
 78 architecturally designed to function as hurricane protection
 79 which complies with or exceeds the current applicable building
 80 code has been previously installed, the board may not install
 81 hurricane shutters, ~~or other~~ hurricane protection, or impact
 82 glass or other code-compliant windows except upon approval by a
 83 majority vote of the voting interests.

84 (b) The association is ~~shall be~~ responsible for the

85 maintenance, repair, and replacement of the hurricane shutters
 86 or other hurricane protection authorized by this subsection if
 87 such hurricane shutters or other hurricane protection is the
 88 responsibility of the association pursuant to the declaration of
 89 condominium. If the hurricane shutters or other hurricane
 90 protection authorized by this subsection are the responsibility
 91 of the unit owners pursuant to the declaration of condominium,
 92 the responsibility for the maintenance, repair, and replacement
 93 of such items are ~~shall be~~ the responsibility of the unit owner.

94 (c) The board may operate shutters installed pursuant to
 95 this subsection without permission of the unit owners only if
 96 ~~where~~ such operation is necessary to preserve and protect the
 97 condominium property and association property. The installation,
 98 replacement, operation, repair, and maintenance of such shutters
 99 in accordance with the procedures set forth in this paragraph
 100 are ~~herein shall~~ not be deemed a material alteration to the
 101 common elements or association property within the meaning of
 102 this section.

103 (d) Notwithstanding any provision to the contrary in the
 104 condominium documents, if approval is required by the documents,
 105 a board may ~~shall~~ not refuse to approve the installation or
 106 replacement of hurricane shutters by a unit owner conforming to
 107 the specifications adopted by the board.

108 Section 3. Subsections (1) and (11) of section 718.116,
 109 Florida Statutes, are amended to read:

110 718.116 Assessments; liability; lien and priority;
 111 interest; collection.—

112 (1) (a) A unit owner, regardless of how his or her title

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113 has been acquired, including by purchase at a foreclosure sale
114 or by deed in lieu of foreclosure, is liable for all assessments
115 which come due while he or she is the unit owner. Additionally,
116 a unit owner is jointly and severally liable with the previous
117 owner for all unpaid assessments that came due up to the time of
118 transfer of title. This liability is without prejudice to any
119 right the owner may have to recover from the previous owner the
120 amounts paid by the owner. Notwithstanding the provisions of
121 this paragraph, the association may not be deemed the previous
122 owner for purposes of joint and several liability for
123 assessments which came due while the association owned the unit
124 or units on which it has foreclosed or taken title via deed in
125 lieu of foreclosure.

126 (b) The liability of a first mortgagee or its successor or
127 assignees who acquire title to a unit by foreclosure or by deed
128 in lieu of foreclosure for the unpaid assessments that became
129 due before the mortgagee's acquisition of title is limited to
130 the lesser of:

131 1. The unit's unpaid common expenses and regular periodic
132 assessments which accrued or came due during the 12 months
133 immediately preceding the acquisition of title and for which
134 payment in full has not been received by the association; or

135 2. One percent of the original mortgage debt. The
136 provisions of this paragraph apply only if the first mortgagee
137 joined the association as a defendant in the foreclosure action.
138 Joinder of the association is not required if, on the date the
139 complaint is filed, the association was dissolved or did not
140 maintain an office or agent for service of process at a location

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141 | which was known to or reasonably discoverable by the mortgagee.

142 | (c) The person acquiring title shall pay the amount owed
143 | to the association within 30 days after transfer of title.
144 | Failure to pay the full amount when due shall entitle the
145 | association to record a claim of lien against the parcel and
146 | proceed in the same manner as provided in this section for the
147 | collection of unpaid assessments.

148 | (d) With respect to each timeshare unit, each owner of a
149 | timeshare estate therein is jointly and severally liable for the
150 | payment of all assessments and other charges levied against or
151 | with respect to that unit pursuant to the declaration or bylaws,
152 | except to the extent that the declaration or bylaws may provide
153 | to the contrary.

154 | (e) Notwithstanding the provisions of paragraph (b), a
155 | first mortgagee or its successor or assignees who acquire title
156 | to a condominium unit as a result of the foreclosure of the
157 | mortgage or by deed in lieu of foreclosure of the mortgage shall
158 | be exempt from liability for all unpaid assessments attributable
159 | to the parcel or chargeable to the previous owner which came due
160 | prior to acquisition of title if the first mortgage was recorded
161 | prior to April 1, 1992. If, however, the first mortgage was
162 | recorded on or after April 1, 1992, or on the date the mortgage
163 | was recorded, the declaration included language incorporating by
164 | reference future amendments to this chapter, the provisions of
165 | paragraph (b) shall apply.

166 | (f) The provisions of this subsection are intended to
167 | clarify existing law, and shall not be available in any case
168 | where the unpaid assessments sought to be recovered by the

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169 association are secured by a lien recorded prior to the
170 recording of the mortgage. Notwithstanding the provisions of
171 chapter 48, the association shall be a proper party to intervene
172 in any foreclosure proceeding to seek equitable relief.

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

176 (11) If the unit is occupied by a tenant and the unit
177 owner is delinquent in paying any monetary obligation due to the
178 association, the association may make a written demand that the
179 tenant pay the outstanding and future monetary obligations
180 related to the condominium unit to the association, and the
181 tenant must make such payment. The demand is continuing in
182 nature and, upon demand, the tenant must pay the monetary
183 obligations to the association until the association releases
184 the tenant or the tenant discontinues tenancy in the unit. The
185 association must mail written notice to the unit owner of the
186 association's demand that the tenant make payments to the
187 association. The association shall, upon request, provide the
188 tenant with written receipts for payments made. A tenant who
189 acts in good faith in response to a written demand from an
190 association is immune from any claim from the unit owner.

191 (a) If the tenant prepaid rent to the unit owner before
192 receiving the demand from the association and provides written
193 evidence of paying the rent to the association within 14 days
194 after receiving the demand, the tenant shall receive credit for
195 the prepaid rent for the applicable period and must make any
196 subsequent rental payments to the association to be credited

197 against the monetary obligations of the unit owner to the
 198 association.

199 (b) The tenant is not liable for increases in the amount
 200 of the monetary obligations due unless the tenant was notified
 201 in writing of the increase at least 10 days before the date the
 202 rent is due. The liability of the tenant may not exceed the
 203 amount due from the tenant to the tenant's landlord. The
 204 tenant's landlord shall provide the tenant a credit against
 205 rents due to the unit owner in the amount of moneys paid to the
 206 association under this section.

207 (c) The association may issue notices under s. 83.56 and
 208 may sue for eviction under ss. 83.59-83.625 as if the
 209 association were a landlord under part II of chapter 83 if the
 210 tenant fails to pay a required payment to the association.
 211 However, the association is not otherwise considered a landlord
 212 under chapter 83 and specifically has no duties under s. 83.51.

213 (d) The tenant does not, by virtue of payment of monetary
 214 obligations to the association, have any of the rights of a unit
 215 owner to vote in any election or to examine the books and
 216 records of the association.

217 (e) A court may supersede the effect of this subsection by
 218 appointing a receiver.

219 Section 4. Paragraph (b) of subsection (2) of section
 220 720.303, Florida Statutes, is amended to read:

221 720.303 Association powers and duties; meetings of board;
 222 official records; budgets; financial reporting; association
 223 funds; recalls.—

224 (2) BOARD MEETINGS.—

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225 (b) Members have the right to attend all meetings of the
 226 board and to speak on any matter placed on the agenda ~~by~~
 227 ~~petition of the voting interests~~ for at least 3 minutes. The
 228 association may adopt written reasonable rules expanding the
 229 right of members to speak and governing the frequency, duration,
 230 and other manner of member statements, which rules must be
 231 consistent with this paragraph and may include a sign-up sheet
 232 for members wishing to speak. Notwithstanding any other law,
 233 meetings between the board or a committee and the association's
 234 attorney to discuss proposed or pending litigation or meetings
 235 of the board held for the purpose of discussing personnel
 236 matters are not required to be open to the members other than
 237 directors.

238 Section 5. Subsection (9) of section 720.306, Florida
 239 Statutes, is amended to read:

240 720.306 Meetings of members; voting and election
 241 procedures; amendments.—

242 (9) (a) ELECTIONS AND BOARD VACANCIES.—Notwithstanding the
 243 governing documents of the association, elections of directors
 244 must be conducted in accordance with the procedures set forth in
 245 s. 718.112(2)(d)3. ~~the governing documents of the association.~~
 246 All members of the association are eligible to serve on the
 247 board of directors, ~~and a member may nominate himself or herself~~
 248 ~~as a candidate for the board at a meeting where the election is~~
 249 ~~to be held or, if the election process allows voting by absentee~~
 250 ~~ballot, in advance of the balloting.~~ except as otherwise
 251 provided in this section ~~the governing documents,~~ boards of
 252 ~~directors must be elected by a plurality of the votes cast by~~

253 | ~~eligible voters.~~

254 | (b) Co-owners of a parcel may not serve as members of the
 255 | board of directors at the same time unless they own more than
 256 | one parcel or unless there are not enough eligible candidates to
 257 | fill the vacancies on the board at the time of the vacancy. A
 258 | person who is delinquent in the payment of any fee, fine, or
 259 | other obligation to the association by more than 90 days is not
 260 | eligible for board membership. A person who has been convicted
 261 | of any felony in this state or in a United States District or
 262 | Territorial Court, or who has been convicted of any offense in
 263 | another jurisdiction which would be considered a felony if
 264 | committed in this state, is not eligible for board membership
 265 | unless such felon's civil rights have been restored for at least
 266 | 5 years as of the date on which such person seeks election to
 267 | the board. The validity of an action by the board is not
 268 | affected if it is later determined that a member of the board is
 269 | ineligible for board membership due to having been convicted of
 270 | a felony.

271 | (c) Any election dispute between a member and an
 272 | association must be submitted to mandatory binding arbitration
 273 | with the division. Such proceedings must be conducted in the
 274 | manner provided by s. 718.1255 and the procedural rules adopted
 275 | by the division. Unless otherwise provided in the bylaws, any
 276 | vacancy occurring on the board before the expiration of a term
 277 | may be filled by an affirmative vote of the majority of the
 278 | remaining directors, even if the remaining directors constitute
 279 | less than a quorum, or by the sole remaining director. In the
 280 | alternative, a board may hold an election to fill the vacancy,

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281 in which case the election procedures must conform to the
282 requirements of the governing documents. Unless otherwise
283 provided in the bylaws, a board member appointed or elected
284 under this section is appointed for the unexpired term of the
285 seat being filled. Filling vacancies created by recall is
286 governed by s. 720.303(10) and rules adopted by the division.

287 Section 6. Subsection (2) of section 720.3085, Florida
288 Statutes, is amended to read:

289 720.3085 Payment for assessments; lien claims.—

290 (2) (a) A parcel owner, regardless of how his or her title
291 to property has been acquired, including by purchase at a
292 foreclosure sale or by deed in lieu of foreclosure, is liable
293 for all assessments that come due while he or she is the parcel
294 owner. The parcel owner's liability for assessments may not be
295 avoided by waiver or suspension of the use or enjoyment of any
296 common area or by abandonment of the parcel upon which the
297 assessments are made. Notwithstanding the provisions of this
298 paragraph, the association may not be deemed the previous owner
299 for purposes of joint and several liability for assessments
300 which came due while the association owned the parcel or parcels
301 on which it has foreclosed or taken title via deed in lieu of
302 foreclosure.

303 (b) A parcel owner is jointly and severally liable with
304 the previous parcel owner for all unpaid assessments that came
305 due up to the time of transfer of title. This liability is
306 without prejudice to any right the present parcel owner may have
307 to recover any amounts paid by the present owner from the
308 previous owner.

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309 (c) Notwithstanding anything to the contrary ~~contained~~ in
310 this section, the liability of a first mortgagee, or its
311 successor or assignee as a subsequent holder of the first
312 mortgage who acquires title to a parcel by foreclosure or by
313 deed in lieu of foreclosure for the unpaid assessments that
314 became due before the mortgagee's acquisition of title, shall be
315 the lesser of:

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

321 2. One percent of the original mortgage debt.
322

323 The limitations on first mortgagee liability provided by this
324 paragraph apply only if the first mortgagee filed suit against
325 the parcel owner and initially joined the association as a
326 defendant in the mortgagee foreclosure action. Joinder of the
327 association is not required if, on the date the complaint is
328 filed, the association was dissolved or did not maintain an
329 office or agent for service of process at a location that was
330 known to or reasonably discoverable by the mortgagee.

331 Section 7. This act shall take effect July 1, 2011.