



590528

LEGISLATIVE ACTION

Senate	.	House
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Senator Bogdanoff moved the following:

**Senate Amendment (with title amendment)**

Delete lines 1322 - 1406  
and insert:

Section 14. Section 719.108, Florida Statutes, is amended  
to read:

719.108 Rents and assessments; liability; lien and  
priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how title is acquired,  
including, without limitation, a purchaser at a judicial sale,  
~~is shall be~~ liable for all rents and assessments coming due  
while the unit owner owns the unit ~~is in exclusive possession of~~  
~~a unit. Additionally, a In a voluntary transfer, the unit owner~~



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14 is in exclusive possession shall be jointly and severally liable  
15 with the previous unit owner for all unpaid rents and  
16 assessments, late fees, interest, costs, and reasonable attorney  
17 fees incurred in an attempt to collect all such amounts that  
18 came due against the previous unit owner for his or her share of  
19 the common expenses up to the time of the transfer of title.  
20 This liability is, without prejudice to the rights of the  
21 present unit owner in exclusive possession to recover from the  
22 previous unit owner any the amounts paid by the present unit  
23 owner in exclusive possession therefor.

24 (2) The liability for rents and assessments may not be  
25 avoided by waiver of the use or enjoyment of any common areas or  
26 by abandonment of the unit for which the rents and assessments  
27 are made.

28 (3) Notwithstanding any other provision of this section,  
29 the liability of a first mortgagee or its successor or assignees  
30 who acquire title to a unit by foreclosure or by deed in lieu of  
31 foreclosure for the unpaid assessments that became due before  
32 the mortgagee's acquisition of title is limited to the lesser  
33 of:

34 (a) The unit's unpaid common expenses and regular periodic  
35 or special assessments that accrued or came due during the 12  
36 months immediately preceding the acquisition of title and for  
37 which payment in full has not been received by the association;  
38 or

39 (b) One percent of the original mortgage debt. This  
40 paragraph applies only if the first mortgagee joined the  
41 association as a defendant in the foreclosure action. Joinder of  
42 the association is not required if, on the date the complaint is



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43 filed, the association was dissolved or did not maintain an  
44 office or agent for service of process at a location that was  
45 known to or reasonably discoverable by the mortgagee.

46 (4) The person acquiring title shall pay the amount owed to  
47 the association within 30 days after transfer of title. Failure  
48 to pay the full amount when due entitles the association to  
49 record a claim of lien against the parcel and proceed in the  
50 same manner as provided in this section for the collection of  
51 unpaid assessments.

52 (5)~~(3)~~ Rents and assessments, and installments on them, not  
53 paid when due bear interest at the rate provided in the  
54 cooperative documents from the date due until paid. This rate  
55 may not exceed the rate allowed by law and, if a rate is not  
56 provided in the cooperative documents, accrues at 18 percent per  
57 annum. If the cooperative documents or bylaws so provide, the  
58 association may charge an administrative late fee in addition to  
59 such interest, not to exceed the greater of \$25 or 5 percent of  
60 each installment of the assessment for each delinquent  
61 installment that the payment is late. Any payment received by an  
62 association must be applied first to any interest accrued by the  
63 association, then to any administrative late fee, then to any  
64 costs and reasonable attorney ~~attorney's~~ fees incurred in  
65 collection, and then to the delinquent assessment. The foregoing  
66 applies notwithstanding any restrictive endorsement,  
67 designation, or instruction placed on or accompanying a payment.  
68 A late fee is not subject to chapter 687 or s. 719.303(4).

69 (6)~~(4)~~ The association has a lien on each cooperative  
70 parcel for any unpaid rents and assessments, plus interest, and  
71 any authorized administrative late fees. If authorized by the



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72 cooperative documents, the lien also secures reasonable attorney  
73 ~~attorney's~~ fees incurred by the association incident to the  
74 collection of the rents and assessments or enforcement of such  
75 lien. The lien is effective from and after recording a claim of  
76 lien in the public records in the county in which the  
77 cooperative parcel is located which states the description of  
78 the cooperative parcel, the name of the unit owner, the amount  
79 due, and the due dates. The lien expires if a claim of lien is  
80 not filed within 1 year after the date the assessment was due,  
81 and the lien does not continue for longer than 1 year after the  
82 claim of lien has been recorded unless, within that time, an  
83 action to enforce the lien is commenced. Except as otherwise  
84 provided in this chapter, a lien may not be filed by the  
85 association against a cooperative parcel until 30 days after the  
86 date on which a notice of intent to file a lien has been  
87 delivered to the owner.

88 (a) The notice must be sent to the unit owner at the  
89 address of the unit by first-class United States mail and:

90 1. If the most recent address of the unit owner on the  
91 records of the association is the address of the unit, the  
92 notice must be sent by registered or certified mail, return  
93 receipt requested, to the unit owner at the address of the unit.

94 2. If the most recent address of the unit owner on the  
95 records of the association is in the United States, but is not  
96 the address of the unit, the notice must be sent by registered  
97 or certified mail, return receipt requested, to the unit owner  
98 at his or her most recent address.

99 3. If the most recent address of the unit owner on the  
100 records of the association is not in the United States, the



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101 notice must be sent by first-class United States mail to the  
102 unit owner at his or her most recent address.

103 (b) A notice that is sent pursuant to this subsection is  
104 deemed delivered upon mailing.

105 ~~(7)-(5)~~ Liens for rents and assessments may be foreclosed by  
106 suit brought in the name of the association, in like manner as a  
107 foreclosure of a mortgage on real property. In any foreclosure,  
108 the unit owner shall pay a reasonable rental for the cooperative  
109 parcel, if so provided in the cooperative documents, and the  
110 plaintiff in the foreclosure is entitled to the appointment of a  
111 receiver to collect the rent. The association has the power,  
112 unless prohibited by the cooperative documents, to bid on the  
113 cooperative parcel at the foreclosure sale and to acquire and  
114 hold, lease, mortgage, or convey it. Suit to recover a money  
115 judgment for unpaid rents and assessments may be maintained  
116 without waiving the lien securing them.

117 ~~(8)-(6)~~ Within 15 days after request by a unit owner or  
118 mortgagee, the association shall provide a certificate stating  
119 all assessments and other moneys owed to the association by the  
120 unit owner with respect to the cooperative parcel. Any person  
121 other than the unit owner who relies upon such certificate shall  
122 be protected thereby. Notwithstanding any limitation on transfer  
123 fees contained in s. 719.106(1)(i), the association or its  
124 authorized agent may charge a reasonable fee for the preparation  
125 of the certificate.

126 ~~(9)-(7)~~ The remedies provided in this section do not exclude  
127 other remedies provided by the cooperative documents and  
128 permitted by law.

129 ~~(10)-(8)~~ (a) A ~~No~~ unit owner may not be excused from the



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130 payment of his or her share of the rents or assessments of a  
131 cooperative unless all unit owners are likewise proportionately  
132 excused from payment, except as provided in subsection (8) ~~(6)~~  
133 and in the following cases:

134 1. If the cooperative documents so provide, a developer or  
135 other person owning cooperative units offered for sale may be  
136 excused from the payment of the share of the common expenses,  
137 assessments, and rents related to those units for a stated  
138 period of time. The period must terminate no later than the  
139 first day of the fourth calendar month following the month in  
140 which the right of exclusive possession is first granted to a  
141 unit owner. However, the developer must pay the portion of  
142 common expenses incurred during that period which exceed the  
143 amount assessed against other unit owners.

144 2. A developer, or other person with an ownership interest  
145 in cooperative units or having an obligation to pay common  
146 expenses, may be excused from the payment of his or her share of  
147 the common expenses which would have been assessed against those  
148 units during the period of time that he or she shall have  
149 guaranteed to each purchaser in the purchase contract or in the  
150 cooperative documents, or by agreement between the developer and  
151 a majority of the unit owners other than the developer, that the  
152 assessment for common expenses of the cooperative imposed upon  
153 the unit owners would not increase over a stated dollar amount  
154 and shall have obligated himself or herself to pay any amount of  
155 common expenses incurred during that period and not produced by  
156 the assessments at the guaranteed level receivable from other  
157 unit owners.

158 (b) If the purchase contract, cooperative documents, or



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159 agreement between the developer and a majority of unit owners  
160 other than the developer provides for the developer or another  
161 person to be excused from the payment of assessments pursuant to  
162 paragraph (a), ~~no~~ funds receivable from unit owners payable to  
163 the association or collected by the developer on behalf of the  
164 association, other than regular periodic assessments for common  
165 expenses as provided in the cooperative documents and disclosed  
166 in the estimated operating budget pursuant to s. 719.503(1)(b)6.  
167 or s. 719.504(20)(b), may not be used for payment of common  
168 expenses prior to the expiration of the period during which the  
169 developer or other person is so excused. This restriction  
170 applies to funds including, but not limited to, capital  
171 contributions or startup funds collected from unit purchasers at  
172 closing.

173 (11)~~(9)~~ The specific purposes of any special assessment,  
174 including any contingent special assessment levied in  
175 conjunction with the purchase of an insurance policy authorized  
176 by s. 719.104(3), approved in accordance with the cooperative  
177 documents shall be set forth in a written notice of such  
178 assessment sent or delivered to each unit owner. The funds  
179 collected pursuant to a special assessment may ~~shall~~ be used  
180 only for the specific purpose or purposes set forth in such  
181 notice or returned to the unit owners. However, upon completion  
182 of such specific purposes, any excess funds shall be considered  
183 common surplus and may, at the discretion of the board, either  
184 be returned to the unit owners or applied as a credit toward  
185 future assessments.

186 (12)~~(10)~~(a) If the unit is occupied by a tenant and the  
187 unit owner is delinquent in paying any monetary obligation due



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188 to the association, the association may make a written demand  
189 that the tenant pay to the association the subsequent rental  
190 payments and continue to make such payments until all monetary  
191 obligations of the unit owner related to the unit have been paid  
192 in full to the association. The tenant must pay the monetary  
193 obligations to the association until the association releases  
194 the tenant or the tenant discontinues tenancy in the unit.

195 1. The association must provide the tenant a notice, by  
196 hand delivery or United States mail, in substantially the  
197 following form:

198  
199 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida  
200 Statutes, we demand that you make your rent payments  
201 directly to the cooperative association and continue doing  
202 so until the association notifies you otherwise.

203  
204 Payment due the cooperative association may be in the same  
205 form as you paid your landlord and must be sent by United  
206 States mail or hand delivery to ...(full address)...,  
207 payable to ...(name)....

208  
209 Your obligation to pay your rent to the association begins  
210 immediately, unless you have already paid rent to your  
211 landlord for the current period before receiving this  
212 notice. In that case, you must provide the association  
213 written proof of your payment within 14 days after  
214 receiving this notice and your obligation to pay rent to  
215 the association would then begin with the next rental  
216 period.





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217  
218 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida  
219 Statutes, your payment of rent to the association gives you  
220 complete immunity from any claim for the rent by your  
221 landlord.

222  
223 2. The association must mail written notice to the unit  
224 owner of the association's demand that the tenant make payments  
225 to the association.

226 3. The association shall, upon request, provide the tenant  
227 with written receipts for payments made.

228 4. A tenant is immune from any claim by the landlord or  
229 unit owner related to the rent timely paid to the association  
230 after the association has made written demand.

231 (b) If the tenant paid rent to the landlord or unit owner  
232 for a given rental period before receiving the demand from the  
233 association and provides written evidence to the association of  
234 having paid the rent within 14 days after receiving the demand,  
235 the tenant shall begin making rental payments to the association  
236 for the following rental period and shall continue making rental  
237 payments to the association to be credited against the monetary  
238 obligations of the unit owner until the association releases the  
239 tenant or the tenant discontinues tenancy in the unit.

240 (c) The liability of the tenant may not exceed the amount  
241 due from the tenant to the tenant's landlord. The tenant's  
242 landlord shall provide the tenant a credit against rents due to  
243 the landlord in the amount of moneys paid to the association.

244 (d) The association may issue notice under s. 83.56 and sue  
245 for eviction under ss. 83.59-83.625 as if the association were a



246 landlord under part II of chapter 83 if the tenant fails to pay  
247 a required payment to the association after written demand has  
248 been made to the tenant. However, the association is not  
249 otherwise considered a landlord under chapter 83 and  
250 specifically has no obligations under s. 83.51.

251 (e) The tenant does not, by virtue of payment of monetary  
252 obligations to the association, have any of the rights of a unit  
253 owner to vote in any election or to examine the books and  
254 records of the association.

255 (f) A court may supersede the effect of this subsection by  
256 appointing a receiver.

257  
258 ===== T I T L E A M E N D M E N T =====

259 And the title is amended as follows:

260 Delete lines 83 - 85

261 and insert:

262 revising provisions with respect to assessments and  
263 liens; revising liability of unit owners; providing  
264 liability limitations of a first mortgagee or its  
265 successor or assignees who acquire title to a unit by  
266 foreclosure; providing requirements for persons  
267 acquiring title; authorizing the association to record  
268 a claim of lien under certain conditions; amending s.