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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2012	.	
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	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 595 - 638

and insert:

Section 6. Paragraphs (a), (b), and (c) of subsection (1) of section 718.116, Florida Statutes, are amended to read:

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

(1) (a) A unit owner, regardless of how the unit owner has acquired his or her title has been acquired, including, but not limited to, by purchase at a foreclosure sale ~~or by deed in lieu of foreclosure~~, is liable for all assessments that ~~which~~ come due while he or she is the unit owner. Additionally, a unit



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14 owner is jointly and severally liable with the previous unit
15 owner for all unpaid assessments, late fees, interest, costs,
16 and reasonable attorney fees incurred by the association in an
17 attempt to collect all such amounts ~~is jointly and severally~~
18 ~~liable with the previous owner for all unpaid assessments~~ that
19 came due up to the time of transfer of title. This liability is
20 without prejudice to any right the present unit owner may have
21 to recover from the previous unit owner the amounts paid by the
22 present unit owner.

23 (b)1. The liability of a first mortgagee or its successors
24 ~~successor~~ or assignees who acquire title to a unit by
25 foreclosure or by deed in lieu of foreclosure for the unpaid
26 assessments, interest, administrative late fees, reasonable
27 costs and attorney fees, and any other fee, cost, or expense
28 incurred in the collection process which ~~that~~ became due before
29 the mortgagee's acquisition of title is limited to the lesser
30 of:

31 a. Only the unit's unpaid common expenses and regular
32 periodic assessments that ~~which~~ accrued or came due during the
33 12 months immediately preceding the acquisition of title and for
34 which payment in full has not been received by the association;
35 or

36 b. One percent of the original mortgage debt.

37 2. Subparagraph 1. applies ~~The provisions of this paragraph~~
38 ~~apply~~ only if the first mortgagee joined the association as a
39 defendant in the foreclosure action. Joinder of the association
40 is not required if, on the date the complaint is filed, the
41 association was dissolved or did not maintain an office or agent
42 for service of process at a location that ~~which~~ was known to or



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43 reasonably discoverable by the mortgagee.

44 3. The first mortgagee or its successors or assignees who
45 acquire title to a unit by foreclosure or by deed in lieu of
46 foreclosure are not liable for any interest, administrative late
47 fee, reasonable cost or attorney fee, or any other fee, cost, or
48 expense that came due before its acquisition of title. This
49 subparagraph is intended to clarify existing law.

50 ~~4.2.~~ An association, or its successor or assignee, that
51 acquires title to a unit through the foreclosure of its lien for
52 assessments is not liable for any unpaid assessments, late fees,
53 interest, or reasonable attorney ~~attorney's~~ fees and costs that
54 came due before the association's acquisition of title in favor
55 of any other association, as defined in s. 718.103(2) or s.
56 720.301(9), which holds a ~~superior~~ lien interest on the unit.
57 This subparagraph is intended to clarify existing law.

58 (c) The person acquiring title shall pay the amount owed to
59 the association within 30 days after transfer of title. Failure
60 to pay the full amount when due entitles ~~shall entitle~~ the
61 association to record a claim of lien against the parcel for the
62 amounts specified in this subsection and proceed in the same
63 manner as provided in this section for the collection of the
64 amount owed and any unpaid assessments coming due after the
65 acquisition of title and other charges authorized by subsection
66 (3) on any unpaid assessments coming due after the acquisition
67 of title.

68
69 Delete lines 1332 - 1416

70 and insert:

71 Section 15. Section 719.108, Florida Statutes, is amended



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72 to read:

73 719.108 Rents and assessments; liability; lien and
74 priority; interest; collection; cooperative ownership.—

75 (1) A unit owner, regardless of how title is acquired,
76 including, without limitation, a purchaser at a judicial sale,
77 ~~is shall be~~ liable for all rents and assessments coming due
78 while the unit owner owns the unit ~~is in exclusive possession of~~
79 ~~a unit. A In a voluntary transfer, the unit owner is also in~~
80 ~~exclusive possession shall be~~ jointly and severally liable with
81 the previous unit owner for all unpaid rents and assessments,
82 late fees, interest, costs, and reasonable attorney fees
83 incurred in an attempt to collect all such amounts that came due
84 against the previous unit owner for his or her share of the
85 common expenses up to the time of the transfer of title. This
86 liability is, without prejudice to the rights of the present
87 unit owner ~~in exclusive possession~~ to recover from the previous
88 unit owner any ~~the~~ amounts paid by the present unit owner ~~in~~
89 ~~exclusive possession therefor.~~

90 (2) The liability for rents and assessments may not be
91 avoided by waiver of the use or enjoyment of any common areas or
92 by abandonment of the unit for which the rents and assessments
93 are made.

94 (3) Notwithstanding any other provision of this section,
95 the liability of a first mortgagee or its successor or assignees
96 who acquire title to a unit by foreclosure or by deed in lieu of
97 foreclosure for the unpaid assessments that became due before
98 the mortgagee's acquisition of title is limited to the lesser
99 of:

100 (a) The unit's unpaid common expenses and regular periodic



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101 or special assessments that accrued or came due during the 12
102 months immediately preceding the acquisition of title and for
103 which payment in full has not been received by the association;
104 or

105 (b) One percent of the original mortgage debt. This
106 paragraph applies only if the first mortgagee joined the
107 association as a defendant in the foreclosure action. Joinder of
108 the association is not required if, on the date the complaint is
109 filed, the association was dissolved or did not maintain an
110 office or agent for service of process at a location that was
111 known to or reasonably discoverable by the mortgagee.

112 (4) The person acquiring title shall pay the amount owed to
113 the association within 30 days after transfer of title. Failure
114 to pay the full amount when due entitles the association to
115 record a claim of lien against the parcel and proceed in the
116 same manner as provided in this section for the collection of
117 unpaid assessments.

118 (5) ~~(3)~~ Rents and assessments, and installments on them, not
119 paid when due bear interest at the rate provided in the
120 cooperative documents from the date due until paid. This rate
121 may not exceed the rate allowed by law and, if a rate is not
122 provided in the cooperative documents, accrues at 18 percent per
123 annum. If the cooperative documents or bylaws so provide, the
124 association may charge an administrative late fee in addition to
125 such interest, not to exceed the greater of \$25 or 5 percent of
126 each installment of the assessment for each delinquent
127 installment that the payment is late. Any payment received by an
128 association must be applied first to any interest accrued by the
129 association, then to any administrative late fee, then to any



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130 costs and reasonable attorney ~~attorney's~~ fees incurred in
131 collection, and then to the delinquent assessment. The foregoing
132 applies notwithstanding any restrictive endorsement,
133 designation, or instruction placed on or accompanying a payment.
134 A late fee is not subject to chapter 687 or s. 719.303(4).

135 (6) ~~(4)~~ The association has a lien on each cooperative
136 parcel for any unpaid rents and assessments, plus interest, and
137 any authorized administrative late fees. If authorized by the
138 cooperative documents, the lien also secures reasonable attorney
139 ~~attorney's~~ fees incurred by the association incident to the
140 collection of the rents and assessments or enforcement of such
141 lien. The lien is effective from and after recording a claim of
142 lien in the public records in the county in which the
143 cooperative parcel is located which states the description of
144 the cooperative parcel, the name of the unit owner, the amount
145 due, and the due dates. The lien expires if a claim of lien is
146 not filed within 1 year after the date the assessment was due,
147 and the lien does not continue for longer than 1 year after the
148 claim of lien has been recorded unless, within that time, an
149 action to enforce the lien is commenced. Except as otherwise
150 provided in this chapter, a lien may not be filed by the
151 association against a cooperative parcel until 30 days after the
152 date on which a notice of intent to file a lien has been
153 delivered to the owner.

154 (a) The notice must be sent to the unit owner at the
155 address of the unit by first-class United States mail and:
156 1. If the most recent address of the unit owner on the
157 records of the association is the address of the unit, the
158 notice must be sent by registered or certified mail, return



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159 receipt requested, to the unit owner at the address of the unit.

160 2. If the most recent address of the unit owner on the
161 records of the association is in the United States, but is not
162 the address of the unit, the notice must be sent by registered
163 or certified mail, return receipt requested, to the unit owner
164 at his or her most recent address.

165 3. If the most recent address of the unit owner on the
166 records of the association is not in the United States, the
167 notice must be sent by first-class United States mail to the
168 unit owner at his or her most recent address.

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

171 (7)~~(5)~~ Liens for rents and assessments may be foreclosed by
172 suit brought in the name of the association, in like manner as a
173 foreclosure of a mortgage on real property. In any foreclosure,
174 the unit owner shall pay a reasonable rental for the cooperative
175 parcel, if so provided in the cooperative documents, and the
176 plaintiff in the foreclosure is entitled to the appointment of a
177 receiver to collect the rent. The association has the power,
178 unless prohibited by the cooperative documents, to bid on the
179 cooperative parcel at the foreclosure sale and to acquire and
180 hold, lease, mortgage, or convey it. Suit to recover a money
181 judgment for unpaid rents and assessments may be maintained
182 without waiving the lien securing them.

183 (8)~~(6)~~ Within 15 days after request by a unit owner or
184 mortgagee, the association shall provide a certificate stating
185 all assessments and other moneys owed to the association by the
186 unit owner with respect to the cooperative parcel. Any person
187 other than the unit owner who relies upon such certificate shall



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188 be protected thereby. Notwithstanding any limitation on transfer
189 fees contained in s. 719.106(1)(i), the association or its
190 authorized agent may charge a reasonable fee for the preparation
191 of the certificate.

192 ~~(9)~~~~(7)~~ The remedies provided in this section do not exclude
193 other remedies provided by the cooperative documents and
194 permitted by law.

195 ~~(10)~~~~(8)~~ (a) A ~~No~~ unit owner may not be excused from the
196 payment of his or her share of the rents or assessments of a
197 cooperative unless all unit owners are likewise proportionately
198 excused from payment, except as provided in subsection ~~(8)~~ ~~(6)~~
199 and in the following cases:

200 1. If the cooperative documents so provide, a developer or
201 other person owning cooperative units offered for sale may be
202 excused from the payment of the share of the common expenses,
203 assessments, and rents related to those units for a stated
204 period of time. The period must terminate no later than the
205 first day of the fourth calendar month following the month in
206 which the right of exclusive possession is first granted to a
207 unit owner. However, the developer must pay the portion of
208 common expenses incurred during that period which exceed the
209 amount assessed against other unit owners.

210 2. A developer, or other person with an ownership interest
211 in cooperative units or having an obligation to pay common
212 expenses, may be excused from the payment of his or her share of
213 the common expenses which would have been assessed against those
214 units during the period of time that he or she shall have
215 guaranteed to each purchaser in the purchase contract or in the
216 cooperative documents, or by agreement between the developer and



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217 a majority of the unit owners other than the developer, that the
218 assessment for common expenses of the cooperative imposed upon
219 the unit owners would not increase over a stated dollar amount
220 and shall have obligated himself or herself to pay any amount of
221 common expenses incurred during that period and not produced by
222 the assessments at the guaranteed level receivable from other
223 unit owners.

224 (b) If the purchase contract, cooperative documents, or
225 agreement between the developer and a majority of unit owners
226 other than the developer provides for the developer or another
227 person to be excused from the payment of assessments pursuant to
228 paragraph (a), ~~no~~ funds receivable from unit owners payable to
229 the association or collected by the developer on behalf of the
230 association, other than regular periodic assessments for common
231 expenses as provided in the cooperative documents and disclosed
232 in the estimated operating budget pursuant to s. 719.503(1)(b)6.
233 or s. 719.504(20)(b), may not be used for payment of common
234 expenses before ~~prior to~~ the expiration of the period during
235 which the developer or other person is so excused. This
236 restriction applies to funds including, but not limited to,
237 capital contributions or startup funds collected from unit
238 purchasers at closing.

239 ~~(11)-(9)~~ The specific purposes of any special assessment,
240 including any contingent special assessment levied in
241 conjunction with the purchase of an insurance policy authorized
242 by s. 719.104(3), approved in accordance with the cooperative
243 documents must ~~shall~~ be set forth in a written notice of such
244 assessment sent or delivered to each unit owner. The funds
245 collected pursuant to a special assessment may ~~shall~~ be used



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246 only for the specific purpose or purposes set forth in such
247 notice or returned to the unit owners. However, upon completion
248 of such ~~specific~~ purposes, any excess funds are ~~shall be~~
249 ~~considered~~ common surplus and may, at the discretion of the
250 board, ~~either~~ be returned to the unit owners or applied as a
251 credit toward future assessments.

252 (12) ~~(10)~~ (a) If the unit is occupied by a tenant and the
253 unit owner is delinquent in paying any monetary obligation due
254 to the association, the association may make a written demand
255 that the tenant pay to the association the subsequent rental
256 payments and continue to make such payments until all monetary
257 obligations of the unit owner related to the unit have been paid
258 in full to the association. The tenant must pay the monetary
259 obligations to the association until the association releases
260 the tenant or the tenant discontinues tenancy in the unit.

261 1. The association must provide the tenant a notice, by
262 hand delivery or United States mail, in substantially the
263 following form:

264
265 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida
266 Statutes, we demand that you make your rent payments
267 directly to the cooperative association and continue
268 doing so until the association notifies you otherwise.

269
270 Payment due the cooperative association may be in the
271 same form as you paid your landlord and must be sent
272 by United States mail or hand delivery to ...(full
273 address)..., payable to ...(name)....

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275 Your obligation to pay your rent to the association
276 begins immediately, unless you have already paid rent
277 to your landlord for the current period before
278 receiving this notice. In that case, you must provide
279 the association written proof of your payment within
280 14 days after receiving this notice and your
281 obligation to pay rent to the association begins ~~would~~
282 ~~then begin~~ with the next rental period.

283
284 Pursuant to section 719.108(12) ~~719.108(10)~~, Florida
285 Statutes, your payment of rent to the association
286 gives you complete immunity from any claim for the
287 rent by your landlord.

288
289 2. The association must mail written notice to the unit
290 owner of the association's demand that the tenant make payments
291 to the association.

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

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

297 (b) If the tenant paid rent to the landlord or unit owner
298 for a given rental period before receiving the demand from the
299 association and provides written evidence to the association of
300 having paid the rent within 14 days after receiving the demand,
301 the tenant shall begin making rental payments to the association
302 for the following rental period and shall continue making rental
303 payments to the association to be credited against the monetary



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304 obligations of the unit owner until the association releases the
305 tenant or the tenant discontinues tenancy in the unit.

306 (c) The liability of the tenant may not exceed the amount
307 due from the tenant to the tenant's landlord. The tenant's
308 landlord shall provide the tenant a credit against rents due to
309 the landlord in the amount of moneys paid to the association.

310 (d) The association may issue notice under s. 83.56 and sue
311 for eviction under ss. 83.59-83.625 as if the association were a
312 landlord under part II of chapter 83 if the tenant fails to pay
313 a required payment to the association after written demand has
314 been made to the tenant. However, the association is not
315 otherwise considered a landlord under chapter 83 and
316 specifically has no obligations under s. 83.51.

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

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

323
324 Delete lines 1850 - 1871
325 and insert:

326 Section 20. Paragraphs (b), (c), and (d) of subsection (2)
327 of section 720.3085, Florida Statutes, are amended to read:

328 720.3085 Payment for assessments; lien claims.-

329 (2)

330 (b) Regardless of how the parcel owner has acquired title,
331 including, but not limited to, by purchase at a foreclosure
332 sale, a parcel owner is liable for all assessments that come due



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333 while he or she is the parcel owner. A parcel owner is also
334 jointly and severally liable with the previous parcel owner for
335 all unpaid assessments, late fees, interest, costs, and
336 reasonable attorney fees incurred by the association in an
337 attempt to collect all such amounts that came due up to the time
338 of transfer of title. This liability is without prejudice to any
339 right the present parcel owner may have to recover ~~any amounts~~
340 ~~paid by the present owner~~ from the previous owner the amounts
341 paid by the present owner.

342 (c)1. Notwithstanding anything to the contrary contained in
343 this section, The liability of a first mortgagee, or its
344 successors ~~successor~~ or assignees ~~assignee~~ as a subsequent
345 holder of the first mortgage who acquire ~~acquires~~ title to a
346 parcel by foreclosure or by deed in lieu of foreclosure for the
347 unpaid assessments, interest, administrative late fees,
348 reasonable costs and attorney fees, and any other fee, cost, or
349 expense incurred in the collection process that became due
350 before the mortgagee's acquisition of title is limited to, ~~shall~~
351 be the lesser of:

352 a.1. Only the parcel's unpaid common expenses and regular
353 periodic or special assessments that accrued or came due during
354 the 12 months immediately preceding the acquisition of title and
355 for which payment in full has not been received by the
356 association; or

357 b.2. One percent of the original mortgage debt.

358 2. Subparagraph 1. applies ~~The limitations on first~~
359 ~~mortgagee liability provided by this paragraph~~ apply only if the
360 first mortgagee ~~filed suit against the parcel owner and~~
361 ~~initially~~ joined the association as a defendant in the mortgagee



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362 foreclosure action. Joinder of the association is not required
363 if, on the date the complaint is filed, the association was
364 dissolved or did not maintain an office or agent for service of
365 process at a location that was known to or reasonably
366 discoverable by the mortgagee.

367 3. The first mortgagee or its successors or assignees who
368 acquire title to a parcel by foreclosure or by deed in lieu of
369 foreclosure are not liable for any interest, administrative late
370 fee, reasonable cost or attorney fee, or any other fee, cost, or
371 expense that came due before its acquisition of title. This
372 subparagraph is intended to clarify existing law.

373 4. ~~(d)~~ An association, or its successor or assignee, that
374 acquires title to a parcel through the foreclosure of its lien
375 for assessments is not liable for any unpaid assessments, late
376 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
377 that came due before the association's acquisition of title in
378 favor of any other association, as defined in s. 718.103(2) or
379 s. 720.301(9), which holds a ~~superior~~ lien interest on the
380 parcel. This paragraph is intended to clarify existing law.

381 (d) The person acquiring title shall pay the amount owed to
382 the association within 30 days after transfer of title. Failure
383 to pay the full amount when due entitles the association to
384 record a claim of lien against the parcel for the amounts
385 specified in this subsection and proceed in the same manner as
386 provided in this section for the collection of the amount owed
387 and any unpaid assessments coming due after the acquisition of
388 title and other charges authorized by subsection (3) on any
389 unpaid assessments coming due after the acquisition of title.

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391 ===== T I T L E A M E N D M E N T =====

392 And the title is amended as follows:

393 Delete lines 88 - 89

394 and insert:

395 revising liability of unit owners; providing liability
396 limitations of a first mortgagee or its successor or
397 assignees who acquire title to a unit by foreclosure;
398 providing requirements for persons acquiring title;
399 authorizing the association to record a claim of lien
400 under certain conditions; amending s.

401

402 Delete line 119

403 and insert:

404 revising liability of certain parcel owners acquiring
405 title; requiring a person acquiring title to pay
406 certain amounts due within a certain time period;