

1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 718.111, F.S.; revising requirements for condominium
 4 association access to a unit; providing an exception
 5 for emergencies; providing for liability of certain
 6 association expenses; authorizing an association to
 7 petition a court of competent jurisdiction for the
 8 appointment of a receiver for certain purposes;
 9 amending ss. 718.116, 719.108, and 720.3085, F.S.;
 10 revising and providing liability of certain
 11 condominium, cooperative unit, and homeowner's
 12 association unit owners acquiring title; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (5) of section 718.111, Florida
 18 Statutes, is amended to read:

19 718.111 The association.—

20 (5) RIGHT OF ACCESS TO UNITS.—

21 (a) The association has the irrevocable right of access to
 22 each unit during reasonable hours, when necessary for the
 23 maintenance, repair, or replacement of any common elements or of
 24 any portion of a unit to be maintained by the association
 25 pursuant to the declaration or as necessary to prevent damage to
 26 the common elements or to a unit or units.

27 (b)1. Notwithstanding paragraph (a) and regardless of
 28 whether authority is provided in the governing documents, an

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29 association, at the sole discretion of the board, may enter an
30 abandoned unit to: inspect the unit and adjoining common
31 elements; make repairs to the unit or to the common elements
32 serving the unit, as needed; repair the unit if mold or
33 deterioration is present; turn on the power for the unit; or
34 otherwise maintain, preserve, or protect the unit and adjoining
35 common elements. For purposes of this paragraph, a unit is
36 presumed to be abandoned if:

37 a. The unit is the subject of a foreclosure action and no
38 tenant appears to have resided in the unit for at least 4
39 continuous weeks without written notice to the association; or

40 b. No tenant appears to have resided in the unit for 2
41 consecutive months without written notice to the association,
42 and the association is unable to contact the owner or determine
43 the whereabouts of the owner after reasonable inquiry.

44 2. Except in the case of an emergency, an association may
45 not enter an abandoned unit until 48 hours after notice of the
46 association's intent to enter the unit has been delivered to the
47 owner at the address of the owner as reflected in the records of
48 the association.

49 3. Any expense incurred by an association pursuant to this
50 paragraph is chargeable to the unit owner and enforceable as an
51 assessment pursuant to s. 718.116, and the association may use
52 its lien authority provided by s. 718.116 to enforce collection
53 of the expense.

54 4. The association may petition a court of competent
55 jurisdiction for the appointment of a receiver and may rent an
56 abandoned unit for the benefit of the association to offset the

57 association's costs and expenses of maintaining, preserving, and
 58 protecting the unit and the adjoining common elements, including
 59 the costs of the receivership and all unpaid assessments,
 60 interest, late fees, costs of collection, and attorney fees
 61 against the rental income.

62 Section 2. Paragraphs (a), (b), and (c) of subsection (1)
 63 of section 718.116, Florida Statutes, are amended to read:

64 718.116 Assessments; liability; lien and priority;
 65 interest; collection.-

66 (1) (a) A unit owner, regardless of how the unit owner has
 67 acquired his or her title has been acquired, including, but not
 68 limited to, by purchase at a foreclosure sale ~~or by deed in lieu~~
 69 ~~of foreclosure,~~ is liable for all assessments that ~~which~~ come
 70 due while he or she is the unit owner. Additionally, a unit
 71 owner is jointly and severally liable with the previous unit
 72 owner for all unpaid assessments, late fees, interest, costs,
 73 and reasonable attorney fees incurred by the association in an
 74 attempt to collect all such amounts ~~is jointly and severally~~
 75 ~~liable with the previous owner for all unpaid assessments~~ that
 76 came due up to the time of transfer of title. This liability is
 77 without prejudice to any right the present unit owner may have
 78 to recover from the previous unit owner the amounts paid by the
 79 present unit owner.

80 (b)1. The liability of a first mortgagee or its successors
 81 ~~successor~~ or assignees who acquire title to a unit by
 82 foreclosure or by deed in lieu of foreclosure for the unpaid
 83 assessments, interest, administrative late fees, reasonable
 84 costs and attorney fees, and any other fee, cost, or expense

85 | incurred in the collection process that became due before the
 86 | mortgagee's acquisition of title is limited to the lesser of:

87 | a. Only the unit's unpaid common expenses and regular
 88 | periodic assessments that ~~which~~ accrued or came due during the
 89 | 12 months immediately preceding the acquisition of title and for
 90 | which payment in full has not been received by the association;
 91 | or

92 | b. One percent of the original mortgage debt.

93 | 2. Subparagraph 1. applies ~~The provisions of this~~
 94 | ~~paragraph apply~~ only if the first mortgagee joined the
 95 | association as a defendant in the foreclosure action. Joinder of
 96 | the association is not required if, on the date the complaint is
 97 | filed, the association was dissolved or did not maintain an
 98 | office or agent for service of process at a location that ~~which~~
 99 | was known to or reasonably discoverable by the mortgagee.

100 | 3. The first mortgagee or its successors or assignees who
 101 | acquire title to a unit by foreclosure or by deed in lieu of
 102 | foreclosure are not liable for any interest, administrative late
 103 | fee, reasonable cost or attorney fee, or any other fee, cost, or
 104 | expense that came due prior to its acquisition of title. This
 105 | subparagraph is intended to clarify existing law.

106 | 4.2. An association, or its successor or assignee, that
 107 | acquires title to a unit through the foreclosure of its lien for
 108 | assessments is not liable for any unpaid assessments, late fees,
 109 | interest, or reasonable attorney ~~attorney's~~ fees and costs that
 110 | came due before the association's acquisition of title in favor
 111 | of any other association, as defined in s. 718.103(2) or s.
 112 | 720.301(9), which holds a ~~superior~~ lien interest on the unit.

113 This subparagraph is intended to clarify existing law.

114 (c) The person acquiring title shall pay the amount owed
 115 to the association within 30 days after transfer of title.
 116 Failure to pay the full amount when due entitles ~~shall entitle~~
 117 the association to record a claim of lien against the parcel for
 118 the amounts specified in this subsection and proceed in the same
 119 manner as provided in this section for the collection of the
 120 amount owed and any unpaid assessments coming due after the
 121 acquisition of title and other charges authorized by subsection
 122 (3) on any unpaid assessments coming due after the acquisition
 123 of title.

124 Section 3. Subsections (1), (3), (4), and (9) of section
 125 719.108, Florida Statutes, are amended to read:

126 719.108 Rents and assessments; liability; lien and
 127 priority; interest; collection; cooperative ownership.-

128 (1)(a) A unit owner, regardless of how the unit owner has
 129 ~~title is acquired title, including, but not limited to without~~
 130 ~~limitation, by purchase a purchaser at a foreclosure judicial~~
 131 ~~sale, is shall be~~ liable for all rents and assessments that come
 132 coming due while he or she is the unit owner is in exclusive
 133 possession of a unit. Additionally, a ~~In a voluntary transfer,~~
 134 ~~the unit owner is in exclusive possession shall be jointly and~~
 135 ~~severally liable with the previous unit owner for all unpaid~~
 136 ~~rents and assessments, late fees, interest, costs, and~~
 137 reasonable attorney fees incurred by the association in an
 138 attempt to collect all such amounts that came due up to against
 139 ~~the previous unit owner for his or her share of the common~~
 140 ~~expenses up to the time of the transfer. This liability is,~~

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141 without prejudice to any right the present ~~rights of the~~ unit
142 owner may have ~~in exclusive possession~~ to recover from the
143 previous unit owner the amounts paid by the present unit owner
144 ~~in exclusive possession therefor.~~

145 (b)1. The liability of a first mortgagee or its successors
146 or assignees who acquire title to a unit by foreclosure or by
147 deed in lieu of foreclosure for the unpaid assessments,
148 interest, administrative late fees, reasonable costs and
149 attorney fees, and any other fees, costs, or expenses incurred
150 in the collection process that became due before the mortgagee's
151 acquisition of title is limited to the lesser of:

152 a. Only the unit's unpaid common expenses and regular
153 periodic assessments that accrued or came due during the 12
154 months immediately preceding the acquisition of title and for
155 which payment in full has not been received by the association;
156 or

157 b. One percent of the original mortgage debt.

158 2. Subparagraph 1. applies only if the first mortgagee
159 joined the association as a defendant in the foreclosure action.
160 Joinder of the association is not required if, on the date the
161 complaint is filed, the association was dissolved or did not
162 maintain an office or agent for service of process at a location
163 that was known to or reasonably discoverable by the mortgagee.

164 3. The first mortgagee or its successors or assignees who
165 acquire title to a unit by foreclosure or by deed in lieu of
166 foreclosure are not liable for any interest, administrative late
167 fee, reasonable cost or attorney fee, or any other fee, cost, or
168 expense that came due prior to its acquisition of title. This

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169 subparagraph is intended to clarify existing law.

170 (c) An association, or its successor or assignee, that
171 acquires title to a unit through the foreclosure of its lien for
172 assessments is not liable for any unpaid assessments, late fees,
173 interest, or reasonable attorney fees and costs that came due
174 before the association's acquisition of title in favor of any
175 other association, as defined in s. 718.103(2) or s. 720.301(9),
176 that holds a lien interest on the unit. This paragraph is
177 intended to clarify existing law.

178 (d) The person acquiring title shall pay the amount owed
179 to the association within 30 days after transfer of title.
180 Failure to pay the full amount when due entitles the association
181 to record a claim of lien against the unit for the amounts
182 specified in this subsection and proceed in the same manner as
183 provided in this section for the collection of the amount owed
184 and any unpaid assessments coming due after the acquisition of
185 title and other charges authorized by subsection (3) on any
186 unpaid assessments coming due after the acquisition of title.

187 (3) Rents and assessments, and installments on them, not
188 paid when due bear interest at the rate provided in the
189 cooperative documents from the date due until paid. This rate
190 may not exceed the rate allowed by law and, if a rate is not
191 provided in the cooperative documents, accrues at 18 percent per
192 annum. If the cooperative documents or bylaws so provide, the
193 association may charge an administrative late fee in addition to
194 such interest, not to exceed the greater of \$25 or 5 percent of
195 each installment of the assessment for each delinquent
196 installment that the payment is late. Any payment received by an

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197 association must be applied first to any interest accrued by the
198 association, then to any administrative late fee, then to any
199 costs and reasonable attorney ~~attorney's~~ fees incurred in
200 collection, and then to the delinquent assessment. The foregoing
201 applies notwithstanding any restrictive endorsement,
202 designation, or instruction placed on or accompanying a payment.
203 A late fee is not subject to chapter 687 or s. 719.303(4).

204 (4) The association has a lien on each cooperative parcel
205 for any unpaid rents and assessments, plus interest, and any
206 authorized administrative late fees. If authorized by the
207 cooperative documents, the lien also secures reasonable attorney
208 ~~attorney's~~ fees incurred by the association incident to the
209 collection of the rents and assessments or enforcement of such
210 lien. The lien is effective from and after recording a claim of
211 lien in the public records in the county in which the
212 cooperative parcel is located which states the description of
213 the cooperative parcel, the name of the unit owner, the amount
214 due, and the due dates. The lien expires if a claim of lien is
215 not filed within 1 year after the date the assessment was due,
216 and the lien does not continue for longer than 1 year after the
217 claim of lien has been recorded unless, within that time, an
218 action to enforce the lien is commenced. Except as otherwise
219 provided in this chapter, a lien may not be filed by the
220 association against a cooperative parcel until 30 days after the
221 date on which a notice of intent to file a lien has been
222 delivered to the owner.

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

225 1. If the most recent address of the unit owner on the
226 records of the association is the address of the unit, the
227 notice must be sent by registered or certified mail, return
228 receipt requested, to the unit owner at the address of the unit.

229 2. If the most recent address of the unit owner on the
230 records of the association is in the United States, but is not
231 the address of the unit, the notice must be sent by registered
232 or certified mail, return receipt requested, to the unit owner
233 at his or her most recent address.

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

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

240 (9) The specific purposes of any special assessment,
241 including any contingent special assessment levied in
242 conjunction with the purchase of an insurance policy authorized
243 by s. 719.104(3), approved in accordance with the cooperative
244 documents shall be set forth in a written notice of such
245 assessment sent or delivered to each unit owner. The funds
246 collected pursuant to a special assessment may ~~shall~~ be used
247 only for the specific purpose or purposes set forth in such
248 notice or returned to the unit owners. However, upon completion
249 of such specific purposes, any excess funds shall be considered
250 common surplus and may, at the discretion of the board, either
251 be returned to the unit owners or applied as a credit toward
252 future assessments.

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

255 720.3085 Payment for assessments; lien claims.—

256 (2) (a) A parcel owner, regardless of how the parcel owner
 257 has acquired ~~his or her title to property has been acquired,~~
 258 including, but not limited to, by purchase at a foreclosure sale
 259 ~~or by deed in lieu of foreclosure,~~ is liable for all assessments
 260 that come due while he or she is the parcel owner. ~~The parcel~~
 261 ~~owner's liability for assessments may not be avoided by waiver~~
 262 ~~or suspension of the use or enjoyment of any common area or by~~
 263 ~~abandonment of the parcel upon which the assessments are made.~~

264 (b) A parcel owner is jointly and severally liable with
 265 the previous parcel owner for all unpaid assessments, late fees,
 266 interest, costs, and reasonable attorney fees incurred by the
 267 association in an attempt to collect all such amounts ~~that came~~
 268 ~~due up to the time of transfer of title.~~ This liability is
 269 without prejudice to any right the present parcel owner may have
 270 to recover from any amounts paid by the previous present owner
 271 the amounts paid by ~~from~~ the previous owner.

272 (c) 1. ~~Notwithstanding anything to the contrary contained~~
 273 ~~in this section,~~ The liability of a first mortgagee, or its
 274 successor or assignee as a subsequent holder of the first
 275 mortgage who acquires title to a parcel by foreclosure or by
 276 deed in lieu of foreclosure for the unpaid assessments,
 277 interest, administrative late fees, reasonable costs and
 278 attorney fees, and any other fees, costs, or expenses incurred
 279 in the collection process that became due before the mortgagee's
 280 acquisition of title, shall be the lesser of:

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281 ~~a.1.~~ Only the parcel's unpaid common expenses and regular
282 periodic or special assessments that accrued or came due during
283 the 12 months immediately preceding the acquisition of title and
284 for which payment in full has not been received by the
285 association; or

286 ~~b.2.~~ One percent of the original mortgage debt.

287 2. Subparagraph 1. applies ~~The limitations on first~~
288 ~~mortgagee liability provided by this paragraph apply~~ only if the
289 first mortgagee ~~filed suit against the parcel owner and~~
290 ~~initially~~ joined the association as a defendant in the mortgagee
291 foreclosure action. Joinder of the association is not required
292 if, on the date the complaint is filed, the association was
293 dissolved or did not maintain an office or agent for service of
294 process at a location that was known to or reasonably
295 discoverable by the mortgagee.

296 3. The first mortgagee or its successors or assignees who
297 acquire title to a unit by foreclosure or by deed in lieu of
298 foreclosure are not liable for any interest, administrative late
299 fee, reasonable cost or attorney fee, or any other fee, cost, or
300 expense that came due prior to its acquisition of title. This
301 subparagraph is intended to clarify existing law.

302 (d) An association, or its successor or assignee, that
303 acquires title to a parcel through the foreclosure of its lien
304 for assessments is not liable for any unpaid assessments, late
305 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
306 that came due before the association's acquisition of title in
307 favor of any other association, as defined in s. 718.103(2) or
308 s. 720.301(9), which holds a ~~superior~~ lien interest on the

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309 parcel. This paragraph is intended to clarify existing law.

310 (e) The person acquiring title shall pay the amount owed

311 to the association within 30 days after transfer of title.

312 Failure to pay the full amount when due entitles the association

313 to record a claim of lien against the parcel for the amounts

314 specified in this subsection and proceed in the same manner as

315 provided in this section for the collection of the amount owed

316 and any unpaid assessments coming due after the acquisition of

317 title and other charges authorized by subsection (3) on any

318 unpaid assessments coming due after the acquisition of title.

319 Section 5. This act shall take effect July 1, 2013.