

By Senator Sachs

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1 A bill to be entitled
2 An act relating to condominium associations; amending
3 s. 399.02, F.S.; removing a specific date by which
4 updates to the safety code for certain existing
5 elevators and escalators may not be enforced in
6 condominiums or multifamily residential buildings;
7 amending s. 718.111, F.S.; authorizing an agent,
8 employee, or representative of a condominium
9 association to enter into a condominium unit that has
10 been abandoned or unoccupied under certain conditions;
11 providing for the presumption of abandonment in
12 certain circumstances; providing for the collection of
13 expenses; providing for the publication of a directory
14 of unit owners if approved by the board; amending s.
15 718.116, F.S.; relieving an association that has taken
16 title to a unit by foreclosure from certain liability;
17 adding to the expenses costs incurred in protecting
18 the collateral of the mortgage for which the unit
19 owner becomes liable; providing the types of costs
20 that may be included in the expenses; providing an
21 exception for expenses to protect the collateral of
22 the mortgage from the exemption from liability for all
23 unpaid assessments attributable to a unit for a first
24 mortgagee or its successor or assignee who acquires
25 title to the unit as a result of a foreclosure
26 proceeding; authorizing an association to have a lien
27 against rents generated by lease or rent of a unit
28 under certain conditions; providing that each lease or
29 rental agreement is subject to the lien right of the

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30 association, which includes an obligation of the
31 tenant or lessee to make direct payment of rents to
32 the association until certain obligations of the unit
33 owner are paid in full; requiring the association to
34 also provide notice to any person acting as a rental
35 agent of its right to demand rental payments under
36 certain conditions; requiring the association to apply
37 excess rent as a credit against future assessments due
38 from the unit; revising provisions that allow an
39 association to bring summary proceedings to sequester
40 or collect rental income; revising provisions that
41 allow an association to sue for eviction; authorizing
42 recovery of reasonable attorney fees and costs by the
43 prevailing party in an action for eviction; providing
44 that the unit owner and the tenant are jointly and
45 severally liable for attorney fees and costs of the
46 association if the association prevails in an action
47 to recover rent after proper demand; providing an
48 effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (9) of section 399.02, Florida
53 Statutes, is amended to read:

54 399.02 General requirements.—

55 (9) Updates to the Safety Code for Existing Elevators and
56 Escalators, ASME A17.1 and A17.3, which require Phase II
57 Firefighters' Service on elevators may not be enforced ~~until~~
58 ~~July 1, 2015, or~~ until the elevator is replaced or requires

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59 major modification, ~~whichever occurs first,~~ on elevators in
60 condominiums or multifamily residential buildings, including
61 those that are part of a continuing care facility licensed under
62 chapter 651, or similar retirement community with apartments,
63 having a certificate of occupancy by the local building
64 authority that was issued before July 1, 2008. This exception
65 does not prevent an elevator owner from requesting a variance
66 from the applicable codes ~~before or after July 1, 2015.~~ This
67 subsection does not prohibit the division from granting
68 variances pursuant to s. 120.542 and subsection (8). The
69 division shall adopt rules to administer this subsection.

70 Section 2. Subsection (5) and paragraph (c) of subsection
71 (12) of section 718.111, Florida Statutes, are amended to read:

72 718.111 The association.—

73 (5) RIGHT OF ACCESS TO UNITS.—

74 (a) The association has the irrevocable right of access to
75 each unit during reasonable hours, when necessary for the
76 maintenance, repair, or replacement of ~~any~~ common elements or of
77 any portion of a unit to be maintained by the association
78 pursuant to the declaration or as necessary to prevent damage to
79 the common elements or to a unit or units.

80 (b) An agent, employee, or representative of the
81 association may enter an abandoned unit to inspect the unit and
82 adjoining common elements; make repairs to the unit or to the
83 common elements serving the unit, as needed; remediate the unit
84 if mold or deterioration is present; turn on the power for the
85 unit; and otherwise maintain, preserve, and protect the unit and
86 adjoining common elements. A unit is presumed to be abandoned if
87 the unit is the subject of a foreclosure action and a person has

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88 not resided in the unit for at least 28 continuous days without
89 notice to the association or if a person has not resided in the
90 unit for 60 consecutive days without notice to the association
91 and the association is unable to contact the owner or determine
92 the location of the owner upon reasonable inquiry. Before an
93 agent, employee, or representative of the association may enter
94 the unit, the association must post a notice of intent to enter
95 on the door to the unit at least 48 hours before the initial
96 entry into the unit and must mail a copy of the notice to the
97 owner at the address contained in the official records of the
98 association. If the unit is not in foreclosure, the association
99 may collect from the unit owner the expenses incurred pursuant
100 to this paragraph using a lien for common expenses as provided
101 in s. 718.116. If the unit is in foreclosure, the association
102 may collect from the purchaser taking title from the first
103 mortgagee, who is responsible for the expenses incurred pursuant
104 to this paragraph, using a lien pursuant to s. 718.116.

105 (12) OFFICIAL RECORDS.—

106 (c) The official records of the association are open to
107 inspection by any association member or the authorized
108 representative of such member at all reasonable times. The right
109 to inspect the records includes the right to make or obtain
110 copies, at the reasonable expense, if any, of the member. The
111 association may adopt reasonable rules regarding the frequency,
112 time, location, notice, and manner of record inspections and
113 copying. The failure of an association to provide the records
114 within 10 working days after receipt of a written request
115 creates a rebuttable presumption that the association willfully
116 failed to comply with this paragraph. A unit owner who is denied

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117 access to official records is entitled to the actual damages or
118 minimum damages for the association's willful failure to comply.
119 Minimum damages are \$50 per calendar day for up to 10 days,
120 beginning on the 11th working day after receipt of the written
121 request. The failure to permit inspection entitles any person
122 prevailing in an enforcement action to recover reasonable
123 attorney's fees from the person in control of the records who,
124 directly or indirectly, knowingly denied access to the records.
125 Any person who knowingly or intentionally defaces or destroys
126 accounting records that are required by this chapter to be
127 maintained during the period for which such records are required
128 to be maintained, or who knowingly or intentionally fails to
129 create or maintain accounting records that are required to be
130 created or maintained, with the intent of causing harm to the
131 association or one or more of its members, is personally subject
132 to a civil penalty pursuant to s. 718.501(1)(d). The association
133 shall maintain an adequate number of copies of the declaration,
134 articles of incorporation, bylaws, and rules, and all amendments
135 to each of the foregoing, as well as the question and answer
136 sheet as described in s. 718.504 and year-end financial
137 information required under this section, on the condominium
138 property to ensure their availability to unit owners and
139 prospective purchasers, and may charge its actual costs for
140 preparing and furnishing these documents to those requesting the
141 documents. Notwithstanding this paragraph, the following records
142 are not accessible to unit owners:

143 1. Any record protected by the lawyer-client privilege as
144 described in s. 90.502 and any record protected by the work-
145 product privilege, including a record prepared by an association

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146 attorney or prepared at the attorney's express direction, which
147 reflects a mental impression, conclusion, litigation strategy,
148 or legal theory of the attorney or the association, and which
149 was prepared exclusively for civil or criminal litigation or for
150 adversarial administrative proceedings, or which was prepared in
151 anticipation of such litigation or proceedings until the
152 conclusion of the litigation or proceedings.

153 2. Information obtained by an association in connection
154 with the approval of the lease, sale, or other transfer of a
155 unit.

156 3. Personnel records of association or management company
157 employees, including, but not limited to, disciplinary, payroll,
158 health, and insurance records. For purposes of this
159 subparagraph, the term "personnel records" does not include
160 written employment agreements with an association employee or
161 management company, or budgetary or financial records that
162 indicate the compensation paid to an association employee.

163 4. Medical records of unit owners.

164 5. Social security numbers, driver's license numbers,
165 credit card numbers, e-mail addresses, telephone numbers,
166 facsimile numbers, emergency contact information, addresses of a
167 unit owner other than as provided to fulfill the association's
168 notice requirements, and other personal identifying information
169 of any person, excluding the person's name, unit designation,
170 mailing address, property address, and any address, e-mail
171 address, or facsimile number provided to the association to
172 fulfill the association's notice requirements. However, an owner
173 may consent in writing to the disclosure of protected
174 information described in this subparagraph.

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175 a. An association may publish a directory that includes the
176 name, address, telephone number, and unit number for unit
177 owners. Unit owners may be included in the directory if the
178 inclusion of the information is authorized by the board of
179 administration. Upon approval by the board, each unit owner
180 shall be notified in writing of the board's action. The unit
181 owner has 30 days to file a written objection only to the
182 inclusion of his or her telephone number. The directory may not
183 be published until after the 30-day objection period has
184 expired. The telephone number of a unit owner who objects may
185 not be included in the directory.

186 b. The association is not liable for the inadvertent
187 disclosure of information that is protected under this
188 subparagraph if the information is included in an official
189 record of the association and is voluntarily provided by an
190 owner and not requested by the association.

191 6. Electronic security measures that are used by the
192 association to safeguard data, including passwords.

193 7. The software and operating system used by the
194 association which allow the manipulation of data, even if the
195 owner owns a copy of the same software used by the association.
196 The data is part of the official records of the association.

197 Section 3. Paragraphs (a), (b), and (e) of subsection (1)
198 and subsection (11) of section 718.116, Florida Statutes, are
199 amended to read:

200 718.116 Assessments; liability; lien and priority;
201 interest; collection.-

202 (1) (a) A unit owner, regardless of how his or her title has
203 been acquired, including by purchase at a foreclosure sale or by

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204 deed in lieu of foreclosure, is liable for all assessments which
205 come due while he or she is the unit owner. Additionally, a unit
206 owner is jointly and severally liable with the previous owner
207 for all unpaid assessments that came due up to the time of
208 transfer of title. This liability is without prejudice to any
209 right the owner may have to recover from the previous owner the
210 amounts paid by the owner. The liability of a unit owner in
211 paragraph (b) does not apply to an association that has taken
212 title to a unit by foreclosure if the association is exempt from
213 liability for sums which came due before or during such
214 ownership.

215 (b)1. The liability of a first mortgagee or its successor
216 or assignees who acquire title to a unit by foreclosure or by
217 deed in lieu of foreclosure for the unpaid assessments that
218 became due before the mortgagee's acquisition of title is
219 limited to ~~the lesser of:~~

220 ~~a.~~ the unit's unpaid common expenses and regular periodic
221 assessments which accrued or came due during the 12 months
222 immediately preceding the acquisition of title and for which
223 payment in full has not been received by the association and
224 expenses incurred in protecting the collateral of the mortgage.
225 Expenses incurred in protecting the collateral of the mortgage
226 are those that directly and significantly benefit the unit
227 encumbered by the mortgage and include, but are not limited to,
228 that unit's proportionate share of assessments for: insurance;
229 maintenance, repair, replacement, and protection of structural
230 components of the unit or common elements; installation,
231 operation, maintenance, repair, replacement, and protection of
232 hurricane protection for the unit or common elements; and

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233 maintenance, repair, replacement, or protection of the unit or
234 its contents when necessary to prevent damage to the common
235 elements or to another unit.~~;~~ ~~or~~

236 ~~b. One percent of the original mortgage debt.~~ The
237 provisions of this paragraph apply only if the first mortgagee
238 joined the association as a defendant in the foreclosure action.
239 Joinder of the association is not required if, on the date the
240 complaint is filed, the association was dissolved or did not
241 maintain an office or agent for service of process at a location
242 which was known to or reasonably discoverable by the mortgagee.

243 2. An association, or its successor or assignee, which ~~that~~
244 acquires title to a unit through the foreclosure of its lien for
245 assessments is not liable for ~~any~~ unpaid assessments, late fees,
246 interest, or reasonable attorney ~~attorney's~~ fees and costs that
247 came due before the association's acquisition of title in favor
248 of any other association, as defined in s. 718.103(2) or s.
249 720.301(9), which holds a superior lien interest on the unit.
250 This subparagraph is intended to clarify existing law.

251 3. The liability of a unit owner does not apply to an
252 association that has taken title to a unit by foreclosure if the
253 association is exempt from liability for sums which came due
254 before or during such ownership.

255 (e) Notwithstanding the provisions of paragraph (b), with
256 the exception of expenses to protect the collateral of the
257 mortgage pursuant to subparagraph (b)1., a first mortgagee or
258 its successor or assignees who acquire title to a condominium
259 unit as a result of the foreclosure of the mortgage or by deed
260 in lieu of foreclosure of the mortgage are ~~shall be~~ exempt from
261 liability for all unpaid assessments attributable to the parcel

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262 or chargeable to the previous owner which came due prior to
263 acquisition of title if the first mortgage was recorded before
264 ~~prior to~~ April 1, 1992. If, however, the first mortgage was
265 recorded on or after April 1, 1992, or on the date the mortgage
266 was recorded, the declaration included language incorporating by
267 reference future amendments to this chapter, the provisions of
268 paragraph (b) ~~shall~~ apply.

269 (11) (a) An association is deemed to have a lien on all
270 rents generated by the lease or rental of units in a condominium
271 operated by the association. The lien is retroactive to July 1,
272 2011, as to each tenancy created or renewed after that date. The
273 lien is superior to the rights of the unit owner and to the
274 holder of any lien on a condominium parcel created after July 1,
275 2011, including, but not limited to, the holder of a first
276 mortgage of record. The lien secures all indebtedness to the
277 association for assessments, interest, late fees, fines,
278 charges, and any other monetary obligation permitted by this
279 chapter or other applicable law to be levied by the association,
280 including the reasonable costs of maintaining or repairing a
281 unit following foreclosure of the association's lien or the
282 abandonment of the unit by the unit owner. An association may
283 receive all rents that are due as a result of the rental or
284 lease of the unit until the issuance of a certificate of title
285 to the holder of the first mortgage or the recording of a deed
286 in lieu of foreclosure in favor of the holder of the first
287 mortgage.

288 (b) Each lease or rental agreement is subject to the lien
289 rights of the association and is deemed to include, and such
290 approval is conditioned upon, an obligation of the tenant or

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291 lessee to make direct payment to the association of the full
292 amount of rent reserved under the lease or rental agreement or
293 the actual practice of the parties, if different, until the
294 association has been paid in full or until the tenant
295 discontinues occupancy of the unit, whichever occurs first. If
296 no terms are stated in a written document that is signed by the
297 parties, it is presumed that rent is due and payable on the
298 first day of each month in advance, except that if the term is
299 for less than one calendar month, it is presumed that the rent
300 reserved is payable in advance of occupancy.

301 (c) If the unit is occupied by a tenant and the unit owner
302 is delinquent in paying a ~~any~~ monetary obligation due to the
303 association, the association may make a written demand that the
304 tenant pay to the association the subsequent rental payments and
305 continue to make such payments until all monetary obligations of
306 the unit owner related to the unit have been paid in full to the
307 association. The tenant shall ~~must~~ pay the monetary obligations
308 to the association until the association releases the tenant or
309 the tenant discontinues tenancy in the unit.

310 1. The association shall ~~must~~ provide the tenant a notice~~7~~
311 and, if known, any person acting as a rental agent a copy of the
312 notice, by hand delivery or United States mail, in substantially
313 the following form:

314
315 Pursuant to section 718.116(11), Florida
316 Statutes, the association demands that you pay your
317 rent directly to the condominium association and
318 continue doing so until the association notifies you
319 otherwise.

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320 Payment due the condominium association may be in
321 the same form as you paid your landlord and must be
322 sent by United States mail or hand delivery to
323 ...(full address)..., payable to ...(name)....

324 Your obligation to pay your rent to the
325 association begins immediately, unless you have
326 already paid rent to your landlord for the current
327 period before receiving this notice. In that case, you
328 must provide the association written proof of your
329 payment within 14 days after receiving this notice and
330 your obligation to pay rent to the association would
331 then begin with the next rental period.

332 Pursuant to section 718.116(11), Florida
333 Statutes, your payment of rent to the association
334 gives you complete immunity from any claim for the
335 rent by your landlord for all amounts timely paid to
336 the association.

337

338 2. The association shall ~~must~~ mail written notice to the
339 unit owner of the association's demand that the tenant make
340 payments to the association.

341 3. The association ~~shall~~, upon request, shall provide the
342 tenant with written receipts for payments made.

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

346 (d) ~~(b)~~ If the tenant paid rent to the landlord or unit
347 owner for a given rental period before receiving the demand from
348 the association and provides written evidence to the association

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349 of having paid the rent within 14 days after receiving the
350 demand, the tenant shall begin making rental payments to the
351 association for the following rental period and shall continue
352 making rental payments to the association to be credited against
353 the monetary obligations of the unit owner until the association
354 releases the tenant or the tenant discontinues tenancy in the
355 unit. After all other financial obligations have been satisfied,
356 the association shall apply the excess rent received by it as a
357 credit against future assessments due from the unit.

358 (e) ~~(e)~~ The liability of the tenant may not exceed the
359 amount due from the tenant to the tenant's landlord. The
360 tenant's landlord shall provide the tenant a credit against
361 rents due to the landlord in the amount of moneys paid to the
362 association.

363 (f) ~~(d)~~ The association may bring summary proceedings under
364 chapter 51 to adjudicate the right of the association to
365 sequester or to collect rental income. With prior leave of a
366 court having jurisdiction of the cause, the association may also
367 ~~issue notice under s. 83.56 and sue for eviction under ss.~~
368 83.59-83.625 as if the association were a landlord under part II
369 of chapter 83 if the tenant fails to pay a required payment to
370 the association after a copy of the written demand has been
371 provided ~~made~~ to the tenant or if the unit is rented or leased
372 without prior association approval if approval is required or
373 permitted under this section or under the governing documents.
374 If the association sues for eviction under ss. 83.59-83.625,
375 separate notice under s. 83.56 is not required. However, the
376 association is not otherwise considered a landlord under chapter
377 83 and specifically has no obligations under s. 83.51. In an

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378 action for eviction, the prevailing party may recover its
379 reasonable attorney fees and costs. In any action arising under
380 this paragraph in which the tenant is found to have failed to
381 pay rent to the association after proper demand, the unit owner
382 and the tenant have joint and several liability for the
383 reasonable attorney fees and costs of the association.

384 (g)~~(e)~~ The tenant does not, by virtue of payment of
385 monetary obligations to the association, have any of the rights
386 of a unit owner to vote in an ~~any~~ election or to examine the
387 books and records of the association.

388 (h)~~(f)~~ A court may supersede the effect of this subsection
389 by appointing a receiver.

390 Section 4. This act shall take effect July 1, 2013.