

By Senator Stargel

15-00983-14

20141462__

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 718.116, F.S.; defining the term "previous owner";
4 revising and providing liability of certain
5 condominium owners acquiring title; amending s.
6 720.3085, F.S.; revising and providing liability of
7 certain homeowners' association parcel owners
8 acquiring title; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraphs (a), (b), and (c) of subsection (1)
13 of section 718.116, Florida Statutes, are amended to read:

14 718.116 Assessments; liability; lien and priority;
15 interest; collection.—

16 (1) (a) A unit owner, regardless of how his or her title has
17 been acquired, including by purchase at a foreclosure sale or by
18 deed in lieu of foreclosure, is liable for all assessments which
19 come due while he or she is the unit owner. Additionally, a unit
20 owner is jointly and severally liable with the previous owner
21 for all unpaid assessments that came due up to the time of
22 transfer of title. For purposes of this paragraph, the term
23 "previous owner" does not include an association that acquires
24 title to a delinquent property through foreclosure or by deed in
25 lieu of foreclosure. The present unit owner's liability for
26 unpaid assessments is limited to any unpaid assessments that
27 accrued before the association acquired title to the delinquent
28 property through foreclosure or by deed in lieu of foreclosure.
29 The present unit owner's payments shall be applied consistent

15-00983-14

20141462__

30 with subsection (3). This liability is without prejudice to any
31 right the owner may have to recover from the previous owner the
32 amounts paid by the owner.

33 (b)1. The liability of a first mortgagee or its successor
34 or assignees who acquire title to a unit by foreclosure or by
35 deed in lieu of foreclosure for the unpaid assessments that
36 became due before the mortgagee's acquisition of title is
37 limited to the lesser of:

38 a. The unit's unpaid common expenses and regular periodic
39 assessments and other costs that ~~which~~ accrued or came due
40 pursuant to the association's governing documents during the 24
41 ~~12~~ months immediately preceding the acquisition of title by the
42 first mortgageholder or the acquisition of title by the
43 association, whichever occurs first, and for which payment in
44 full has not been received by the association; or

45 b. Two ~~One~~ percent of the original mortgage debt.

46 2. ~~The provisions of This subsection applies~~ paragraph
47 ~~apply~~ only if the first mortgagee initially joined the
48 association as a defendant in the foreclosure action. Joinder of
49 the association is not required if, on the date the complaint is
50 filed, the association was dissolved or did not maintain an
51 office or agent for service of process at a location which was
52 known to or reasonably discoverable by the mortgagee.

53 3.2. ~~An association, or its successor or assignee, that~~
54 acquires title to a unit through the foreclosure of its lien for
55 assessments is not liable for any unpaid assessments, late fees,
56 interest, or reasonable attorney ~~attorney's~~ fees and costs that
57 came due before the association's acquisition of title in favor
58 of any other association, as defined in s. 718.103(2) or s.

15-00983-14

20141462__

59 720.301(9), which holds a superior lien interest on the unit.
60 This subparagraph is intended to clarify existing law.

61 4. The liability of a first mortgagee or his or her
62 successor or assignee who acquires title to a unit by
63 foreclosure or by deed in lieu of foreclosure for attorney fees
64 under this subsection is limited to \$4,000, unless a court of
65 competent jurisdiction finds exceptional circumstances that
66 justify a greater award.

67 (c) The person acquiring title shall pay the amount owed to
68 the association within 30 days after transfer of title. Failure
69 to pay the full amount when due shall entitle the association to
70 record a claim of lien against the parcel and proceed in the
71 same manner as provided in this section for the collection of
72 the amount owed, any unpaid assessments, and other charges
73 authorized by subsection (3) coming due after the acquisition of
74 title.

75 Section 2. Paragraphs (a), (b), and (c) of subsection (2)
76 of section 720.3085, Florida Statutes, are amended to read:

77 720.3085 Payment for assessments; lien claims.—

78 (2) (a) A parcel owner, regardless of how his or her title
79 to property has been acquired, including by purchase at a
80 foreclosure sale or by deed in lieu of foreclosure, is liable
81 for all assessments that come due while he or she is the parcel
82 owner. The parcel owner's liability for assessments may not be
83 avoided by waiver or suspension of the use or enjoyment of any
84 common area or by abandonment of the parcel upon which the
85 assessments are made. A parcel owner's payments shall be applied
86 pursuant to paragraph (3) (b).

87 (b) A parcel owner is jointly and severally liable with the

15-00983-14

20141462__

88 previous parcel owner for all unpaid assessments that came due
89 up to the time of transfer of title. This liability is without
90 prejudice to any right the present parcel owner may have to
91 recover any amounts paid by the present owner from the previous
92 owner. For the purposes of this paragraph, the term "previous
93 owner" does ~~shall~~ not include an association that acquires title
94 to a delinquent property through foreclosure or by deed in lieu
95 of foreclosure. The present parcel owner's liability for unpaid
96 assessments is limited to any unpaid assessments that accrued
97 before the association acquired title to the delinquent property
98 through foreclosure or by deed in lieu of foreclosure. The
99 present parcel owner's payments shall be applied pursuant to
100 paragraph (3) (b).

101 (c)1. Notwithstanding anything to the contrary contained in
102 this section, the liability of a first mortgagee, or his or her
103 ~~its~~ successor or assignee as a subsequent holder of the first
104 mortgage who acquires title to a parcel by foreclosure or by
105 deed in lieu of foreclosure for the unpaid assessments that
106 became due before the mortgagee's acquisition of title, shall be
107 the lesser of:

108 a.1. The parcel's unpaid common expenses and regular
109 periodic or special assessments and other costs that accrued or
110 came due pursuant to the association's governing documents
111 during the 24 ~~12~~ months immediately preceding the acquisition of
112 title by a purchaser at a mortgage foreclosure sale or the
113 acquisition of title by the association, whichever occurs first,
114 and for which payment in full has not been received by the
115 association; or

116 b.2. Two ~~One~~ percent of the original mortgage debt if the

15-00983-14

20141462__

117 titleholder was the first mortgagee who acquired title by
118 foreclosure.

119 2. The liability of a first mortgagee or his or her
120 successor or assignee who acquires title to a parcel by
121 foreclosure or by deed in lieu of foreclosure for attorney fees
122 under this subsection is limited to \$4,000, unless a court of
123 competent jurisdiction finds exceptional circumstances that
124 justify a greater award.

125

126 The limitations on first mortgagee liability provided by this
127 paragraph apply only if the first mortgagee filed suit against
128 the parcel owner and initially joined the association as a
129 defendant in the mortgagee foreclosure action. Joinder of the
130 association is not required if, on the date the complaint is
131 filed, the association was dissolved or did not maintain an
132 office or agent for service of process at a location that was
133 known to or reasonably discoverable by the mortgagee.

134 Section 3. This act shall take effect July 1, 2014.