

By the Committee on Regulated Industries; and Senator Stargel

580-02898-14

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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

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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 mortgagee or the acquisition of title by the association,
43 whichever occurs first, and for which payment in full has not
44 been received by the association; or

45 b. Two ~~One~~ percent of the original mortgage debt if the
46 titleholder was the first mortgagee who acquired title by
47 foreclosure.

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

55 ~~3.2.~~ An association, or its successor or assignee, that
56 acquires title to a unit through the foreclosure of its lien for
57 assessments is not liable for any unpaid assessments, late fees,
58 interest, or reasonable attorney ~~attorney's~~ fees and costs that

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59 came due before the association's acquisition of title in favor
60 of any other association, as defined in s. 718.103(2) or s.
61 720.301(9), which holds a superior lien interest on the unit.
62 This subparagraph is intended to clarify existing law.

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

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

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

79 720.3085 Payment for assessments; lien claims.—

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

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88 pursuant to paragraph (3) (b).

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

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

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

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117 association; or

118 ~~b.2. Two~~ One percent of the original mortgage debt if the
119 titleholder was the first mortgagee who acquired title by
120 foreclosure.

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

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

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