

HB 871

2014

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 unit owners acquiring
8 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
17 has been acquired, including by purchase at a foreclosure sale
18 or by deed in lieu of foreclosure, is liable for all assessments
19 which come due while he or she is the unit owner. Additionally,
20 a unit owner is jointly and severally liable with the previous
21 owner 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
 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.
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
68 to the association within 30 days after transfer of title.
69 Failure to pay the full amount when due shall entitle the
70 association to record a claim of lien against the parcel and
71 proceed in the same manner as provided in this section for the
72 collection of the amount owed, any unpaid assessments, and other
73 charges authorized by s. 718.116(3) coming due after the
74 acquisition of 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

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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 s. 720.3085(3) (b).

87 (b) A parcel owner is jointly and severally liable with
88 the previous parcel owner for all unpaid assessments that came
89 due up to the time of transfer of title. This liability is
90 without prejudice to any right the present parcel owner may have
91 to recover any amounts paid by the present owner from the
92 previous owner. For the purposes of this paragraph, the term
93 "previous owner" does ~~shall~~ not include an association that
94 acquires title to a delinquent property through foreclosure or
95 by deed in lieu of foreclosure. The present parcel owner's
96 liability for unpaid assessments is limited to any unpaid
97 assessments that accrued before the association acquired title
98 to the delinquent property through foreclosure or by deed in
99 lieu of foreclosure. The present parcel owner's payments shall
100 be applied pursuant to s. 720.3085(3) (b).

101 (c)1. Notwithstanding anything to the contrary contained
102 in this section, the liability of a first mortgagee, or his or
103 her ~~its~~ successor or assignee as a subsequent holder of the
104 first mortgage who acquires title to a parcel by foreclosure or

105 by 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
 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 unit 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

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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.