

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 homeowners'
 12 association unit owners acquiring title; amending s.
 13 720.303, F.S.; authorizing a homeowners' association
 14 to print and distribute a member directory under
 15 certain conditions; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

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

21 718.111 The association.—

22 (5) RIGHT OF ACCESS TO UNITS.—

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

29 (b)1. Notwithstanding paragraph (a) and regardless of
30 whether authority is provided in the governing documents, an
31 association, at the sole discretion of the board, may enter an
32 abandoned unit to: inspect the unit and appurtenant common
33 elements; make repairs to the unit or to the common elements
34 serving the unit, as needed; repair the unit if mold or
35 deterioration is present; turn on the power for the unit; or
36 otherwise maintain, preserve, or protect the unit and
37 appurtenant common elements. For purposes of this paragraph, a
38 unit is presumed to be abandoned if:

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

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

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

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

56 4. The association may petition a court of competent

57 | jurisdiction for the appointment of a receiver and may rent an
 58 | abandoned unit for the benefit of the association to offset the
 59 | association's costs and expenses of maintaining, preserving, and
 60 | protecting the unit and the appurtenant common elements,
 61 | including the costs of the receivership and all unpaid
 62 | assessments, interest, late fees, and attorney fees against the
 63 | rental income.

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

66 | 718.116 Assessments; liability; lien and priority;
 67 | interest; collection.-

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

82 | (b)1. The liability of a first mortgagee or its successors
 83 | ~~successor~~ or assignees who acquire title to a unit by
 84 | foreclosure or by deed in lieu of foreclosure for the unpaid

85 assessments, interest, late fees, and reasonable costs and
 86 attorney fees incurred in the collection process that became due
 87 before the mortgagee's acquisition of title is limited to the
 88 lesser of:

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

94 b. One percent of the original mortgage debt.

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

102 3. The first mortgagee or its successors or assignees who
 103 acquire title to a unit by foreclosure or by deed in lieu of
 104 foreclosure are not liable for any interest, late fee, or
 105 reasonable costs or attorney fees that came due before its
 106 acquisition of title. This subparagraph is intended to clarify
 107 existing law.

108 ~~4.2.~~ An association, or its successor or assignee, that
 109 acquires title to a unit through the foreclosure of its lien for
 110 assessments is not liable for any unpaid assessments, late fees,
 111 interest, or reasonable attorney ~~attorney's~~ fees and costs that
 112 came due before the association's acquisition of title in favor

113 of any other association, as defined in s. 718.103(2) or s.
 114 720.301(9), which holds a ~~superior~~ lien interest on the unit.
 115 This subparagraph is intended to clarify existing law.

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

126 Section 3. Subsections (1), (3), (4), and (9) of section
 127 719.108, Florida Statutes, are amended to read:

128 719.108 Rents and assessments; liability; lien and
 129 priority; interest; collection; cooperative ownership.—

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

141 ~~previous unit owner for his or her share of the common expenses~~
142 ~~up to the time of the transfer. This liability is,~~ without
143 prejudice to any right the present ~~rights of the~~ unit owner may
144 have in exclusive possession to recover from the previous unit
145 owner the amounts paid by the present unit owner ~~in exclusive~~
146 ~~possession therefor.~~

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

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

158 b. One percent of the original mortgage debt.

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

165 3. The first mortgagee or its successors or assignees who
166 acquire title to a unit by foreclosure or by deed in lieu of
167 foreclosure are not liable for any interest, late fee, or
168 reasonable costs or attorney fees that came due before its

169 acquisition of title. This subparagraph is intended to clarify
 170 existing law.

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

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

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

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

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

224 (a) The notice must be sent to the unit owner at the

225 address of the unit by first-class United States mail and:
 226 1. If the most recent address of the unit owner on the
 227 records of the association is the address of the unit, the
 228 notice must be sent by registered or certified mail, return
 229 receipt requested, to the unit owner at the address of the unit.
 230 2. If the most recent address of the unit owner on the
 231 records of the association is in the United States, but is not
 232 the address of the unit, the notice must be sent by registered
 233 or certified mail, return receipt requested, to the unit owner
 234 at his or her most recent address.
 235 3. If the most recent address of the unit owner on the
 236 records of the association is not in the United States, the
 237 notice must be sent by first-class United States mail to the
 238 unit owner at his or her most recent address.
 239 (b) A notice that is sent pursuant to this subsection is
 240 deemed delivered upon mailing.
 241 (9) The specific purposes of any special assessment,
 242 including any contingent special assessment levied in
 243 conjunction with the purchase of an insurance policy authorized
 244 by s. 719.104(3), approved in accordance with the cooperative
 245 documents shall be set forth in a written notice of such
 246 assessment sent or delivered to each unit owner. The funds
 247 collected pursuant to a special assessment may ~~shall~~ be used
 248 only for the specific purpose or purposes set forth in such
 249 notice or returned to the unit owners. However, upon completion
 250 of such specific purposes, any excess funds shall be considered
 251 common surplus and may, at the discretion of the board, either
 252 be returned to the unit owners or applied as a credit toward

253 future assessments.

254 Section 4. Paragraph (c) of subsection (5) of section
 255 720.303, Florida Statutes, is amended to read:

256 720.303 Association powers and duties; meetings of board;
 257 official records; budgets; financial reporting; association
 258 funds; recalls.—

259 (5) INSPECTION AND COPYING OF RECORDS.—The official
 260 records shall be maintained within the state and must be open to
 261 inspection and available for photocopying by members or their
 262 authorized agents at reasonable times and places within 10
 263 business days after receipt of a written request for access.
 264 This subsection may be complied with by having a copy of the
 265 official records available for inspection or copying in the
 266 community. If the association has a photocopy machine available
 267 where the records are maintained, it must provide parcel owners
 268 with copies on request during the inspection if the entire
 269 request is limited to no more than 25 pages.

270 (c) The association may adopt reasonable written rules
 271 governing the frequency, time, location, notice, records to be
 272 inspected, and manner of inspections, but may not require a
 273 parcel owner to demonstrate any proper purpose for the
 274 inspection, state any reason for the inspection, or limit a
 275 parcel owner's right to inspect records to less than one 8-hour
 276 business day per month. The association may impose fees to cover
 277 the costs of providing copies of the official records,
 278 including, without limitation, the costs of copying. The
 279 association may charge up to 50 cents per page for copies made
 280 on the association's photocopier. If the association does not

281 have a photocopy machine available where the records are kept,
282 or if the records requested to be copied exceed 25 pages in
283 length, the association may have copies made by an outside
284 vendor or association management company personnel and may
285 charge the actual cost of copying, including any reasonable
286 costs involving personnel fees and charges at an hourly rate for
287 vendor or employee time to cover administrative costs to the
288 vendor or association. The association shall maintain an
289 adequate number of copies of the recorded governing documents,
290 to ensure their availability to members and prospective members.
291 Notwithstanding this paragraph, the following records are not
292 accessible to members or parcel owners:

293 1. Any record protected by the lawyer-client privilege as
294 described in s. 90.502 and any record protected by the work-
295 product privilege, including, but not limited to, a record
296 prepared by an association attorney or prepared at the
297 attorney's express direction which reflects a mental impression,
298 conclusion, litigation strategy, or legal theory of the attorney
299 or the association and which was prepared exclusively for civil
300 or criminal litigation or for adversarial administrative
301 proceedings or which was prepared in anticipation of such
302 litigation or proceedings until the conclusion of the litigation
303 or proceedings.

304 2. Information obtained by an association in connection
305 with the approval of the lease, sale, or other transfer of a
306 parcel.

307 3. Personnel records of the association's employees,
308 including, but not limited to, disciplinary, payroll, health,

309 and insurance records. For purposes of this subparagraph, the
310 term "personnel records" does not include written employment
311 agreements with an association employee or budgetary or
312 financial records that indicate the compensation paid to an
313 association employee.

314 4. Medical records of parcel owners or community
315 residents.

316 5. Social security numbers, driver's license numbers,
317 credit card numbers, electronic mailing addresses, telephone
318 numbers, facsimile numbers, emergency contact information, any
319 addresses for a parcel owner other than as provided for
320 association notice requirements, and other personal identifying
321 information of any person, excluding the person's name, parcel
322 designation, mailing address, and property address. The
323 association may print and distribute to parcel owners a
324 directory containing the name, parcel address, and telephone
325 number of parcel owners. However, an owner may exclude his or
326 her telephone number from the directory by so requesting in
327 writing to the association ~~consent in writing to the disclosure~~
328 ~~of protected information described in this subparagraph.~~ The
329 association is not liable for the disclosure of information that
330 is protected under this subparagraph if the information is
331 included in an official record of the association and is
332 voluntarily provided by an owner and not requested by the
333 association.

334 6. Any electronic security measure that is used by the
335 association to safeguard data, including passwords.

336 7. The software and operating system used by the

337 association which allows the manipulation of data, even if the
338 owner owns a copy of the same software used by the association.
339 The data is part of the official records of the association.

340 Section 5. Subsection (2) of section 720.3085, Florida
341 Statutes, is amended to read:

342 720.3085 Payment for assessments; lien claims.—

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

351 (b) A parcel owner is jointly and severally liable with
352 the previous parcel owner for all unpaid assessments, late fees,
353 interest, and reasonable costs and attorney fees incurred by the
354 association in an attempt to collect all such amounts that came
355 due up to the time of transfer of title. This liability is
356 without prejudice to any right the present parcel owner may have
357 to recover from any amounts paid by the previous present owner
358 the amounts paid by ~~from~~ the previous owner.

359 (c) 1. ~~Notwithstanding anything to the contrary contained~~
360 ~~in this section,~~ The liability of a first mortgagee, or its
361 successor or assignee as a subsequent holder of the first
362 mortgage who acquires title to a parcel by foreclosure or by
363 deed in lieu of foreclosure for the unpaid assessments,
364 interest, late fees, and reasonable costs and attorney fees

365 incurred in the collection process that became due before the
366 mortgagee's acquisition of title, shall be the lesser of:

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

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

373 2. Subparagraph 1. applies ~~The limitations on first~~
374 ~~mortgagee liability provided by this paragraph apply~~ only if the
375 first mortgagee ~~filed suit against the parcel owner and~~
376 ~~initially~~ joined the association as a defendant in the mortgagee
377 foreclosure action. Joinder of the association is not required
378 if, on the date the complaint is filed, the association was
379 dissolved or did not maintain an office or agent for service of
380 process at a location that was known to or reasonably
381 discoverable by the mortgagee.

382 3. The first mortgagee or its successors or assignees who
383 acquire title to a unit by foreclosure or by deed in lieu of
384 foreclosure are not liable for any interest, late fee, or
385 reasonable costs or attorney fees that came due before its
386 acquisition of title. This subparagraph is intended to clarify
387 existing law.

388 (d) An association, or its successor or assignee, that
389 acquires title to a parcel through the foreclosure of its lien
390 for assessments is not liable for any unpaid assessments, late
391 fees, interest, or reasonable attorney ~~attorney's~~ fees and costs
392 that came due before the association's acquisition of title in

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393 favor of any other association, as defined in s. 718.103(2) or
394 s. 720.301(9), which holds a ~~superior~~ lien interest on the
395 parcel. This paragraph is intended to clarify existing law.

396 (e) The person acquiring title shall pay the amount owed
397 to the association within 30 days after transfer of title.
398 Failure to pay the full amount when due entitles the association
399 to record a claim of lien against the parcel for the amounts
400 specified in this subsection and proceed in the same manner as
401 provided in this section for the collection of the amount owed
402 and any unpaid assessments coming due after the acquisition of
403 title and other charges authorized by subsection (3) on any
404 unpaid assessments coming due after the acquisition of title.

405 Section 6. This act shall take effect July 1, 2013.