

HB 1195

2011

1                   A bill to be entitled  
2           An act relating to community associations; amending s.  
3           718.111, F.S.; requiring an insurance company insuring  
4           condominium association property to provide notice to unit  
5           owners if the insurance will be cancelled or not renewed  
6           by the association; authorizing a majority of the voting  
7           interests of the association to direct the board to obtain  
8           substitute coverage; amending s. 718.113, F.S.;  
9           authorizing the board of a condominium association to  
10          install impact glass or other code-compliant windows under  
11          certain circumstances; amending s. 718.116, F.S.;  
12          providing that a condominium association may not be deemed  
13          to be the previous owner of a condominium unit under  
14          certain circumstances; requiring a tenant to pay all of a  
15          unit owner's outstanding monetary obligations relating to  
16          the unit to the condominium association under certain  
17          circumstances; amending s. 720.303, F.S.; providing that a  
18          member of a homeowners' association has the right to speak  
19          on any matter placed on the agenda of the board of the  
20          association for at least 3 minutes; amending s. 720.306,  
21          F.S.; specifying additional requirements for elections for  
22          members of the board of a homeowners' association;  
23          specifying additional requirements for candidates to be a  
24          member of the board of a homeowners' association; amending  
25          s. 720.3085, F.S.; providing that a condominium  
26          homeowners' association may not be deemed to be the  
27          previous owner of a parcel under certain circumstances;  
28          providing an effective date.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

Section 1. Paragraph (d) of subsection (11) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection. However, if an association having 50 or fewer units cancels or does not renew insurance coverage required or permitted under this subsection, the insurance company must notify all unit owners by certified and regular mail at least 30 days before the effective date of a termination of coverage. Upon receipt of the notice, a majority of the voting interests may agree in writing to direct the board to obtain substitute coverage for the association as a common expense.

57 Section 2. Subsection (5) of section 718.113, Florida  
 58 Statutes, is amended to read:

59 718.113 Maintenance; limitation upon improvement; display  
 60 of flag; hurricane shutters; display of religious decorations.—

61 (5) Each board of administration shall adopt hurricane  
 62 shutter specifications for each building within each condominium  
 63 operated by the association which shall include color, style,  
 64 and other factors deemed relevant by the board. All  
 65 specifications adopted by the board must ~~shall~~ comply with the  
 66 applicable building code.

67 (a) The board may, subject to the provisions of s.  
 68 718.3026, and the approval of a majority of voting interests of  
 69 the condominium, install hurricane shutters, impact glass or  
 70 other code-compliant windows, or hurricane protection that  
 71 complies with or exceeds the applicable building code. However,  
 72 ~~or both, except that~~ a vote of the owners is not required if the  
 73 maintenance, repair, and replacement of hurricane shutters,  
 74 impact glass, or other code-compliant windows ~~or other forms of~~  
 75 ~~hurricane protection~~ are the responsibility of the association  
 76 pursuant to the declaration of condominium. If ~~However,~~ where  
 77 hurricane protection or laminated glass or window film  
 78 architecturally designed to function as hurricane protection  
 79 which complies with or exceeds the current applicable building  
 80 code has been previously installed, the board may not install  
 81 hurricane shutters, ~~or other~~ hurricane protection, or impact  
 82 glass or other code-compliant windows except upon approval by a  
 83 majority vote of the voting interests.

84 (b) The association is ~~shall be~~ responsible for the

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85 maintenance, repair, and replacement of the hurricane shutters  
86 or other hurricane protection authorized by this subsection if  
87 such hurricane shutters or other hurricane protection is the  
88 responsibility of the association pursuant to the declaration of  
89 condominium. If the hurricane shutters or other hurricane  
90 protection authorized by this subsection are the responsibility  
91 of the unit owners pursuant to the declaration of condominium,  
92 the responsibility for the maintenance, repair, and replacement  
93 of such items are ~~shall be~~ the responsibility of the unit owner.

94 (c) The board may operate shutters installed pursuant to  
95 this subsection without permission of the unit owners only if  
96 ~~where~~ such operation is necessary to preserve and protect the  
97 condominium property and association property. The installation,  
98 replacement, operation, repair, and maintenance of such shutters  
99 in accordance with the procedures set forth in this paragraph  
100 are ~~herein shall~~ not be deemed a material alteration to the  
101 common elements or association property within the meaning of  
102 this section.

103 (d) Notwithstanding any provision to the contrary in the  
104 condominium documents, if approval is required by the documents,  
105 a board may ~~shall~~ not refuse to approve the installation or  
106 replacement of hurricane shutters by a unit owner conforming to  
107 the specifications adopted by the board.

108 Section 3. Subsections (1) and (11) of section 718.116,  
109 Florida Statutes, are amended to read:

110 718.116 Assessments; liability; lien and priority;  
111 interest; collection.—

112 (1) (a) A unit owner, regardless of how his or her title

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113 has been acquired, including by purchase at a foreclosure sale  
114 or by deed in lieu of foreclosure, is liable for all assessments  
115 which come due while he or she is the unit owner. Additionally,  
116 a unit owner is jointly and severally liable with the previous  
117 owner for all unpaid assessments that came due up to the time of  
118 transfer of title. This liability is without prejudice to any  
119 right the owner may have to recover from the previous owner the  
120 amounts paid by the owner. Notwithstanding the provisions of  
121 this paragraph, the association may not be deemed the previous  
122 owner for purposes of joint and several liability for  
123 assessments which came due while the association owned the unit  
124 or units on which it has foreclosed or taken title via deed in  
125 lieu of foreclosure.

126 (b) The liability of a first mortgagee or its successor or  
127 assignees who acquire title to a unit by foreclosure or by deed  
128 in lieu of foreclosure for the unpaid assessments that became  
129 due before the mortgagee's acquisition of title is limited to  
130 the lesser of:

131 1. The unit's unpaid common expenses and regular periodic  
132 assessments which accrued or came due during the 12 months  
133 immediately preceding the acquisition of title and for which  
134 payment in full has not been received by the association; or

135 2. One percent of the original mortgage debt. The  
136 provisions of this paragraph apply only if the first mortgagee  
137 joined the association as a defendant in the foreclosure action.  
138 Joinder of the association is not required if, on the date the  
139 complaint is filed, the association was dissolved or did not  
140 maintain an office or agent for service of process at a location

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141 | which was known to or reasonably discoverable by the mortgagee.

142 |       (c) The person acquiring title shall pay the amount owed  
143 | to the association within 30 days after transfer of title.  
144 | Failure to pay the full amount when due shall entitle the  
145 | association to record a claim of lien against the parcel and  
146 | proceed in the same manner as provided in this section for the  
147 | collection of unpaid assessments.

148 |       (d) With respect to each timeshare unit, each owner of a  
149 | timeshare estate therein is jointly and severally liable for the  
150 | payment of all assessments and other charges levied against or  
151 | with respect to that unit pursuant to the declaration or bylaws,  
152 | except to the extent that the declaration or bylaws may provide  
153 | to the contrary.

154 |       (e) Notwithstanding the provisions of paragraph (b), a  
155 | first mortgagee or its successor or assignees who acquire title  
156 | to a condominium unit as a result of the foreclosure of the  
157 | mortgage or by deed in lieu of foreclosure of the mortgage shall  
158 | be exempt from liability for all unpaid assessments attributable  
159 | to the parcel or chargeable to the previous owner which came due  
160 | prior to acquisition of title if the first mortgage was recorded  
161 | prior to April 1, 1992. If, however, the first mortgage was  
162 | recorded on or after April 1, 1992, or on the date the mortgage  
163 | was recorded, the declaration included language incorporating by  
164 | reference future amendments to this chapter, the provisions of  
165 | paragraph (b) shall apply.

166 |       (f) The provisions of this subsection are intended to  
167 | clarify existing law, and shall not be available in any case  
168 | where the unpaid assessments sought to be recovered by the

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169 association are secured by a lien recorded prior to the  
170 recording of the mortgage. Notwithstanding the provisions of  
171 chapter 48, the association shall be a proper party to intervene  
172 in any foreclosure proceeding to seek equitable relief.

173 (g) For purposes of this subsection, the term "successor  
174 or assignee" as used with respect to a first mortgagee includes  
175 only a subsequent holder of the first mortgage.

176 (11) If the unit is occupied by a tenant and the unit  
177 owner is delinquent in paying any monetary obligation due to the  
178 association, the association may make a written demand that the  
179 tenant pay the outstanding and future monetary obligations  
180 related to the condominium unit to the association, and the  
181 tenant must make such payment. The demand is continuing in  
182 nature and, upon demand, the tenant must pay the monetary  
183 obligations to the association until the association releases  
184 the tenant or the tenant discontinues tenancy in the unit. The  
185 association must mail written notice to the unit owner of the  
186 association's demand that the tenant make payments to the  
187 association. The association shall, upon request, provide the  
188 tenant with written receipts for payments made. A tenant who  
189 acts in good faith in response to a written demand from an  
190 association is immune from any claim from the unit owner.

191 (a) If the tenant prepaid rent to the unit owner before  
192 receiving the demand from the association and provides written  
193 evidence of paying the rent to the association within 14 days  
194 after receiving the demand, the tenant shall receive credit for  
195 the prepaid rent for the applicable period and must make any  
196 subsequent rental payments to the association to be credited

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197 against the monetary obligations of the unit owner to the  
198 association.

199 (b) The tenant is not liable for increases in the amount  
200 of the monetary obligations due unless the tenant was notified  
201 in writing of the increase at least 10 days before the date the  
202 rent is due. The liability of the tenant may not exceed the  
203 amount due from the tenant to the tenant's landlord. The  
204 tenant's landlord shall provide the tenant a credit against  
205 rents due to the unit owner in the amount of moneys paid to the  
206 association under this section.

207 (c) The association may issue notices under s. 83.56 and  
208 may sue for eviction under ss. 83.59-83.625 as if the  
209 association were a landlord under part II of chapter 83 if the  
210 tenant fails to pay a required payment to the association.  
211 However, the association is not otherwise considered a landlord  
212 under chapter 83 and specifically has no duties under s. 83.51.

213 (d) The tenant does not, by virtue of payment of monetary  
214 obligations to the association, have any of the rights of a unit  
215 owner to vote in any election or to examine the books and  
216 records of the association.

217 (e) A court may supersede the effect of this subsection by  
218 appointing a receiver.

219 Section 4. Paragraph (b) of subsection (2) of section  
220 720.303, Florida Statutes, is amended to read:

221 720.303 Association powers and duties; meetings of board;  
222 official records; budgets; financial reporting; association  
223 funds; recalls.—

224 (2) BOARD MEETINGS.—



225 (b) Members have the right to attend all meetings of the  
 226 board and to speak on any matter placed on the agenda ~~by~~  
 227 ~~petition of the voting interests~~ for at least 3 minutes. The  
 228 association may adopt written reasonable rules expanding the  
 229 right of members to speak and governing the frequency, duration,  
 230 and other manner of member statements, which rules must be  
 231 consistent with this paragraph and may include a sign-up sheet  
 232 for members wishing to speak. Notwithstanding any other law,  
 233 meetings between the board or a committee and the association's  
 234 attorney to discuss proposed or pending litigation or meetings  
 235 of the board held for the purpose of discussing personnel  
 236 matters are not required to be open to the members other than  
 237 directors.

238 Section 5. Subsection (9) of section 720.306, Florida  
 239 Statutes, is amended to read:

240 720.306 Meetings of members; voting and election  
 241 procedures; amendments.—

242 (9) (a) ELECTIONS AND BOARD VACANCIES.—Notwithstanding the  
 243 governing documents of the association, elections of directors  
 244 must be conducted in accordance with the procedures set forth in  
 245 s. 718.112(2)(d)3. ~~the governing documents of the association.~~  
 246 All members of the association are eligible to serve on the  
 247 board of directors, ~~and a member may nominate himself or herself~~  
 248 ~~as a candidate for the board at a meeting where the election is~~  
 249 ~~to be held or, if the election process allows voting by absentee~~  
 250 ~~ballot, in advance of the balloting.~~ except as otherwise  
 251 provided in this section ~~the governing documents,~~ boards of  
 252 ~~directors must be elected by a plurality of the votes cast by~~

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253 | ~~eligible voters.~~

254 |       (b) Co-owners of a parcel may not serve as members of the  
255 | board of directors at the same time unless they own more than  
256 | one parcel or unless there are not enough eligible candidates to  
257 | fill the vacancies on the board at the time of the vacancy. A  
258 | person who is delinquent in the payment of any fee, fine, or  
259 | other obligation to the association by more than 90 days is not  
260 | eligible for board membership. A person who has been convicted  
261 | of any felony in this state or in a United States District or  
262 | Territorial Court, or who has been convicted of any offense in  
263 | another jurisdiction which would be considered a felony if  
264 | committed in this state, is not eligible for board membership  
265 | unless such felon's civil rights have been restored for at least  
266 | 5 years as of the date on which such person seeks election to  
267 | the board. The validity of an action by the board is not  
268 | affected if it is later determined that a member of the board is  
269 | ineligible for board membership due to having been convicted of  
270 | a felony.

271 |       (c) Any election dispute between a member and an  
272 | association must be submitted to mandatory binding arbitration  
273 | with the division. Such proceedings must be conducted in the  
274 | manner provided by s. 718.1255 and the procedural rules adopted  
275 | by the division. Unless otherwise provided in the bylaws, any  
276 | vacancy occurring on the board before the expiration of a term  
277 | may be filled by an affirmative vote of the majority of the  
278 | remaining directors, even if the remaining directors constitute  
279 | less than a quorum, or by the sole remaining director. In the  
280 | alternative, a board may hold an election to fill the vacancy,

281 in which case the election procedures must conform to the  
 282 requirements of the governing documents. Unless otherwise  
 283 provided in the bylaws, a board member appointed or elected  
 284 under this section is appointed for the unexpired term of the  
 285 seat being filled. Filling vacancies created by recall is  
 286 governed by s. 720.303(10) and rules adopted by the division.

287 Section 6. Subsection (2) of section 720.3085, Florida  
 288 Statutes, is amended to read:

289 720.3085 Payment for assessments; lien claims.—

290 (2) (a) A parcel owner, regardless of how his or her title  
 291 to property has been acquired, including by purchase at a  
 292 foreclosure sale or by deed in lieu of foreclosure, is liable  
 293 for all assessments that come due while he or she is the parcel  
 294 owner. The parcel owner's liability for assessments may not be  
 295 avoided by waiver or suspension of the use or enjoyment of any  
 296 common area or by abandonment of the parcel upon which the  
 297 assessments are made. Notwithstanding the provisions of this  
 298 paragraph, the association may not be deemed the previous owner  
 299 for purposes of joint and several liability for assessments  
 300 which came due while the association owned the parcel or parcels  
 301 on which it has foreclosed or taken title via deed in lieu of  
 302 foreclosure.

303 (b) A parcel owner is jointly and severally liable with  
 304 the previous parcel owner for all unpaid assessments that came  
 305 due up to the time of transfer of title. This liability is  
 306 without prejudice to any right the present parcel owner may have  
 307 to recover any amounts paid by the present owner from the  
 308 previous owner.

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309           (c) Notwithstanding anything to the contrary ~~contained~~ in  
310 this section, the liability of a first mortgagee, or its  
311 successor or assignee as a subsequent holder of the first  
312 mortgage who acquires title to a parcel by foreclosure or by  
313 deed in lieu of foreclosure for the unpaid assessments that  
314 became due before the mortgagee's acquisition of title, shall be  
315 the lesser of:

316           1. The parcel's unpaid common expenses and regular  
317 periodic or special assessments that accrued or came due during  
318 the 12 months immediately preceding the acquisition of title and  
319 for which payment in full has not been received by the  
320 association; or

321           2. One percent of the original mortgage debt.  
322

323 The limitations on first mortgagee liability provided by this  
324 paragraph apply only if the first mortgagee filed suit against  
325 the parcel owner and initially joined the association as a  
326 defendant in the mortgagee foreclosure action. Joinder of the  
327 association is not required if, on the date the complaint is  
328 filed, the association was dissolved or did not maintain an  
329 office or agent for service of process at a location that was  
330 known to or reasonably discoverable by the mortgagee.

331           Section 7. This act shall take effect July 1, 2011.