

By Senator Ring

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

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30           circumstances; providing an effective date.

31  
32       Be It Enacted by the Legislature of the State of Florida:

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34           Section 1. Paragraph (d) of subsection (11) of section  
35       718.111, Florida Statutes, is amended to read:

36           718.111 The association.—

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

45           (d) An association controlled by unit owners operating as a  
46       residential condominium shall use its best efforts to obtain and  
47       maintain adequate property insurance to protect the association,  
48       the association property, the common elements, and the  
49       condominium property that must be insured by the association  
50       pursuant to this subsection. However, if an association having  
51       50 or fewer units cancels or does not renew insurance coverage  
52       required or permitted under this subsection, the insurance  
53       company must notify all unit owners by certified and regular  
54       mail at least 30 days before the effective date of a termination  
55       of coverage. Upon receipt of the notice, a majority of the  
56       voting interests may agree in writing to direct the board to  
57       obtain substitute coverage for the association as a common  
58       expense.

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

61 718.113 Maintenance; limitation upon improvement; display  
62 of flag; hurricane shutters; display of religious decorations.-

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

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

86 (b) The association is ~~shall be~~ responsible for the  
87 maintenance, repair, and replacement of the hurricane shutters

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

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

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

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

112 718.116 Assessments; liability; lien and priority;  
113 interest; collection.-

114 (1) (a) A unit owner, regardless of how his or her title has  
115 been acquired, including by purchase at a foreclosure sale or by  
116 deed in lieu of foreclosure, is liable for all assessments which

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

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

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

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

144 (c) The person acquiring title shall pay the amount owed to  
145 the association within 30 days after transfer of title. Failure

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146 to pay the full amount when due shall entitle the association to  
147 record a claim of lien against the parcel and proceed in the  
148 same manner as provided in this section for the collection of  
149 unpaid assessments.

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

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

168 (f) The provisions of this subsection are intended to  
169 clarify existing law, and shall not be available in any case  
170 where the unpaid assessments sought to be recovered by the  
171 association are secured by a lien recorded prior to the  
172 recording of the mortgage. Notwithstanding the provisions of  
173 chapter 48, the association shall be a proper party to intervene  
174 in any foreclosure proceeding to seek equitable relief.

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

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

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

201 (b) The tenant is not liable for increases in the amount of  
202 the monetary obligations due unless the tenant was notified in  
203 writing of the increase at least 10 days before the date the

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204 rent is due. The liability of the tenant may not exceed the  
205 amount due from the tenant to the tenant's landlord. The  
206 tenant's landlord shall provide the tenant a credit against  
207 rents due to the unit owner in the amount of moneys paid to the  
208 association under this section.

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

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

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

221 Section 4. Paragraph (b) of subsection (2) of section  
222 720.303, Florida Statutes, is amended to read:

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

226 (2) BOARD MEETINGS.—

227 (b) Members have the right to attend all meetings of the  
228 board and to speak on any matter placed on the agenda ~~by~~  
229 ~~petition of the voting interests~~ for at least 3 minutes. The  
230 association may adopt written reasonable rules expanding the  
231 right of members to speak and governing the frequency, duration,  
232 and other manner of member statements, which rules must be

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233 consistent with this paragraph and may include a sign-up sheet  
234 for members wishing to speak. Notwithstanding any other law,  
235 meetings between the board or a committee and the association's  
236 attorney to discuss proposed or pending litigation or meetings  
237 of the board held for the purpose of discussing personnel  
238 matters are not required to be open to the members other than  
239 directors.

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

242 720.306 Meetings of members; voting and election  
243 procedures; amendments.—

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

256 (b) Co-owners of a parcel may not serve as members of the  
257 board of directors at the same time unless they own more than  
258 one parcel or unless there are not enough eligible candidates to  
259 fill the vacancies on the board at the time of the vacancy. A  
260 person who is delinquent in the payment of any fee, fine, or  
261 other obligation to the association by more than 90 days is not

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262 eligible for board membership. A person who has been convicted  
263 of any felony in this state or in a United States District or  
264 Territorial Court, or who has been convicted of any offense in  
265 another jurisdiction which would be considered a felony if  
266 committed in this state, is not eligible for board membership  
267 unless such felon's civil rights have been restored for at least  
268 5 years as of the date on which such person seeks election to  
269 the board. The validity of an action by the board is not  
270 affected if it is later determined that a member of the board is  
271 ineligible for board membership due to having been convicted of  
272 a felony.

273 (c) Any election dispute between a member and an  
274 association must be submitted to mandatory binding arbitration  
275 with the division. Such proceedings must be conducted in the  
276 manner provided by s. 718.1255 and the procedural rules adopted  
277 by the division. Unless otherwise provided in the bylaws, any  
278 vacancy occurring on the board before the expiration of a term  
279 may be filled by an affirmative vote of the majority of the  
280 remaining directors, even if the remaining directors constitute  
281 less than a quorum, or by the sole remaining director. In the  
282 alternative, a board may hold an election to fill the vacancy,  
283 in which case the election procedures must conform to the  
284 requirements of the governing documents. Unless otherwise  
285 provided in the bylaws, a board member appointed or elected  
286 under this section is appointed for the unexpired term of the  
287 seat being filled. Filling vacancies created by recall is  
288 governed by s. 720.303(10) and rules adopted by the division.

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

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291 720.3085 Payment for assessments; lien claims.—

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

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

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

318 1. The parcel's unpaid common expenses and regular periodic  
319 or special assessments that accrued or came due during the 12

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320 months immediately preceding the acquisition of title and for  
321 which payment in full has not been received by the association;  
322 or

323       2. One percent of the original mortgage debt.

324

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

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