



## Pending Bills Would Help Protect Associations

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**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I have been reading some articles and see that there are some proposals to help associations recoup their lost revenues due to foreclosures. What will it take to get these bills passed? **W.J. (via e-mail)**

**A:** In my opinion, one of the greatest inequities in Florida law is a lender's preferred status with respect to association assessments. Taxes trump a mortgage lien, which is why mortgage lenders routinely escrow for tax payments. These days, the community association provides many of the services that tax dollars used to pay for, including water and sewer, trash collection, and road maintenance.

However, when a lender takes title after a foreclosure situation, the lender is only liable for six months of unpaid assessments in the condominium context or twelve months of unpaid assessments in the homeowner's association context. Both statutes also provide an alternative liability cap of one percent of the original mortgage debt. The mortgagee is always liable for the lower number.

Several proposals were introduced during the 2009 regular session of the Florida Legislature, but successfully killed by the mortgage banking industry.

2010 looks like it will be another active year in the foreclosure reform area. According to Yeline Goin, Co-Executive Director of Becker & Poliakoff's Community Association Leadership Lobby (CALL) "there are already several Bills in play which we expect to generate a lot of discussion in Tallahassee this year." According to Goin, the legislative proposals that are on the table so far include the following:

- **House Bill 115:** This proposal states that during the pendency of a foreclosure action, if the unit is occupied by a tenant, the association may demand that the tenants pay rent directly to the association, with a right of eviction for non-compliance. This Bill would also permit the condominium association to suspend certain common element use rights for nonpayment, although utility services could not be suspended. Voting rights could also be suspended for delinquencies. Similar amendments are proposed in this Bill for Chapter 720, the Florida Homeowners Association Act.
- **Senate Bill 164:** This proposal requires any mortgagee which has not completed its foreclosure within six months from filing its foreclosure lawsuit to pay the "statutory cap" (six months of past due assessments or

one percent of the original mortgage debt, whichever is less) during the pendency of the lawsuit. This proposal would apply to condominiums only.

- House Bill 329: This proposal would also allow the collection of rents directly from tenants, and permit suspension of certain common element use rights and voting rights. Significantly, this Bill also deletes the statutory cap and would require a foreclosing lender to pay all unpaid assessments if the foreclosure action is not completed within a year.
- House Bill 337/Senate Bill 968: This Bill states that if an owner is delinquent in the payment of assessments, they can be restricted from running for office, holding office, serving on committees, leasing units, or using the common areas.
- House Bill 419/Senate Bill 864: This Bill is similar to a couple of others already discussed regarding the right to demand payment of rents directly from tenants. This proposal also states that an association's claim of lien can include the cost of collection efforts by management companies or licensed managers.
- Senate Bill 780: This Bill would require a financial institution that institutes a foreclosure proceeding to timely pay all fees associated with or owed by that property, including but not limited to homeowner's association fees, maintenance fees, and property taxes.
- Senate Bill 1196: This proposal, similar to several of the others mentioned above, includes the right to collect management company charges as part of the association's lien, permit interception of rents, and permit suspension of common element use rights and voting rights. This proposal is applicable to both

condominiums and homeowners' associations.

- Senate Bill 1270: This Bill would permit a condominium association to disallow use of common area facilities by unit owners who are delinquent in the payment of assessments by more than ninety days.
- Senate Bill 1272: This proposal would change the condominium "statutory cap" from six months of past due assessments/one percent of original mortgage debt (whichever is less) to twelve months past due assessments/one percent of original mortgage debt (whichever is less). This Bill further provides that in addition to the "statutory cap", if a first mortgagee institutes a foreclosure action, the mortgagee is liable for any special assessments levied against a unit during the pendency of such action for damage to the condominium property.

As you can see, there is no shortage of State Legislators who agree that relief for associations is long overdue. If history is any guide, the lenders and their lobbyists will see it differently.

Dave Aronberg (aronberg.dave.web@flsenate.gov), Garret Richter (richter.garrett.web@flsenate.gov) and Michael Bennett (bennett.mike.web@flsenate.gov) are three members of the State Senate whose Districts include Lee County. State Representatives with Districts covering Lee County are Gary Aubuchon (gary.aubuchon@myfloridahouse.gov), Paige Kreegel (paige.kreegel@myfloridahouse.gov), Nick Thompson (nick.thompson@myfloridahouse.gov) Trudi Williams (trudi.williams@myfloridahouse.gov) and Kenneth Roberson (ken.roberson@myfloridahouse.gov).

You know what to do.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*