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**Questions that should be brought to the attention of the House Select Condo/HOA committee**

The following statutes contain provisions that are contrary to the ordinary, everyday legal definitions meanings of the terms, or the intrusion of legalities quite foreign to the normal use of the legal terms and constructs. The examples will make this statement much clearer. (Emphasis added).

**697.01 Instruments deemed mortgages.--**

- (1) All conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.

A mortgage requires a payment of money to the homeowner/debtor.

**702.09 Definitions.--**For the purposes of ss. 702.07 and 702.08 the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a homeowners' association as defined in s. 712.01; the word "debt" shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words "foreclosure proceedings" shall embrace every action in the circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word "property" shall mean and include both real and personal property.

Here, as pertaining to condos and HOAs, assessments have been classified as a mortgage even though no condo or HOA money has been advanced or transferred to the homeowner. Why was this idiosyncrasy added? Let's continue.

## 718.116 Assessments; liability; lien and priority; interest; collection.—

(6)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

This clause in the Condo statutes grants the right of the association to foreclose based on the nonpayment of assessments, which are equivalent to a mortgage. And, the right to lien for nonpayment is **mandated as a statutory lien** by,

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. [First sentence only].

Please note that the lien is backdated to the recording of the declaration, even though the homeowner has not yet emerged on the scene. It appears to be a neat ex post facto law never explained to the homebuyer, because to explain it would be telling the homeowner that he has surrendered his homestead exemption rights even though no money was advanced to him as with a truly consensual mortgage or a security backed loan. It is a technicality of law favoring equitable servitudes over the intent of the Florida constitution with its broad wording granting homestead exemption protection in the case of contracts for payment. The exception to exemptions pertain to *“obligations contracted for the purchase . . . for house”*

### **Florida Constitution**

#### SECTION 4. Homestead; exemptions.--

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

By treating the assessment lien as a mortgage, the lien can be foreclosed and a mortgage is not exempt from foreclosure. The intent of the constitution is quite clear, but the special laws for associations bears down on the unknowing homebuyer. If the homestead exemption is challenged under this out-of-joint inclusion of assessments as a mortgage, the HOA attorney will point to the pre-dated covenants that are binding since the homebuyer takes possession “subject to the CC&Rs” with its rights to foreclose without homestead exemption.

In short, the homebuyer has unknowingly collateralized his home to insure the survival of the HOA, and, unlike a mortgage, he pays until he dies or moves out.

Furthermore, unlike the debtor-creditor laws that protect the debtor from legal action if he properly notifies the creditor of a dispute, the homeowner must continually pay while attempting to resolve the dispute. Why is this special law directed at the people, the homeowner?

(9)(a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

The “following cases” just excuse the developer from making payments under certain conditions. Again, another discriminatory law against the homeowner. Why?

Specifically in regard to homeowner association statutes, the following raises the specter of a taking without consent. A majority that is no longer bound by CC&Rs can bind all homeowners under this delegation of eminent domain rights to an extinct association.

#### **720.403 Preservation of residential communities; revival of declaration of covenants.--**

(2) [T]he parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the homeowners' association for the community upon approval by the parcel owners.

#### **720.405 Organizing committee; parcel owner approval.--**

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote.

It should be apparent by now that the above wording as applied to associations is deliberate and intentional. It should be apparent by now that the legal scheme of the condo/HOA is defective, and that coercive and special laws are required to make these private governments function. For what other justifiable reason were these laws put into effect?