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BULLETIN

FLORIDA BULLETIN 07-12

To: All Old Republic National Title Agents and Offices

From: Underwriting Department

Re: Mortgagee Consent or Joinder to Amendments to Condominium Declaration – Amendment to *Florida Statutes Section 718.110(11)*

Date: October 1, 2007

Section 718.110(11) of the *Florida Statutes* dealing with the requirement of mortgagee consent or joinder to amendments of condominium declarations has been revised, with an effective date of October 1, 2007. After study, the Florida Legislature found that requiring mortgagee consent to amendments that do not affect the rights or interests of the mortgagee is an unreasonable and substantial logistical and financial burden on the unit owners as contrasted to the compelling state interest in enabling members of a condominium association to approve amendments to the condominium documents through legal means.

The revision applies to “any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation or bylaws, or for any other matter and shall apply to the following matters;”

1. Mortgagee consent or joinder is required to declaration amendments related to alteration or modification of a unit or its appurtenances or changes to the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium as provided in *Section 718.110(4)* of the *Florida Statutes*;
2. *Section 718.111(8)* of the *Florida Statutes* that prohibits amendments to the declaration that permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit join in the execution of the amendment; and

This Bulletin is to become a permanent part of your Bulletin Manual to assist with your compliance with the requirements contained herein.

3. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The statute as amended also permits the association to rely on the public records to identify the holders of outstanding mortgages and use the address of the mortgagee listed in the recorded mortgage, unless there is a different address for the mortgagee in any subsequent assignment or modification of said mortgage, provided the modification or assignment references the recording information of the original mortgage. The condominium association must send a written request to each unit owner whose unit is encumbered for any information the owner has regarding the name and address of the party to whom mortgage payments are currently being made. Notice is to be sent to that party if the address provided in the original mortgage is different from the name and address of the mortgagee or assignee shown in the public records.

The revised statute only permits those mortgagees who were entitled to notice and an opportunity to consent, but did not receive said notice, the right to void the amendment. An action by the mortgagee to void an amendment is subject to a 5 year statute of limitations from the date of discovery of the failure of notice for those matters listed above, or 5 years after the recording date of the certificate of amendment for all other amendments. These provisions concerning a mortgagee's right to void an amendment apply to all mortgages, regardless of their recording date.

Agents and examiners should make certain that they familiarize themselves with these revised statutory provisions and incorporate them in their review of title.

Should you have any questions, please contact your Old Republic Title Underwriting Department.