MEMORANDUM

Agenda Item No. 11(A)(20)

TO:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners	**DATE:**	February 17, 2009
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution urging the State Legislature to pass a law to modify section 718.116, Florida Statutes

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/up

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: February 17, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(20)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(20)
2-17-09

RESOLUTION NO. _____

RESOLUTION URGING THE STATE LEGISLATURE TO PASS A LAW TO MODIFY SECTION 718.116, FLORIDA STATUTES, TO PROTECT CONDOMINIUM ASSOCIATIONS AND REQUIRE PAYMENTS BY FIRST MORTGAGE LENDERS OF CONDOMINIUM ASSOCIATION ASSESSMENTS AND DUES

WHEREAS, Miami-Dade County has a significant number of condominium associations operating within its boundaries; and

WHEREAS, financial strength and well-being of these condominium associations effects the welfare of the County; and

WHEREAS, Section 718.116, Florida Statutes, provides a cap on the amount of association dues and assessments which a first mortgage lender can be required to pay upon acquiring title to a unit by foreclosure or by deed in lieu of foreclosure; and

WHEREAS, this cap on assessment shifts the burden of the cost of operating the association to the remaining units and has a negative impact on the association financial stability; and

WHEREAS, the rising number of foreclosures filed by first mortgage lenders within the Miami-Dade County area has increased dramatically placing an even more significant burden upon the associations within Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to amend Section 718.116 to provide for additional protections for the condominium associations and urges the Legislature during the 2009 Legislative Session to remove this cap on payment of back assessments and charges. This Board endorses the proposed legislation that has been circulated by the Honorable Jerry Libbin, City Commissioner of the City of Miami Beach and which is attached hereto as Exhibit "A".

Section 2. Directs the Clerk of the Board to transmit certified copies of this resolution to the Governor, Senate President, House Speaker, and the Chair and members of the Miami-Dade County State Legislative Delegation.

Section 3. Directs the County's State lobbyists to advocate for the issues identified in Section 1 above and directs the Office of Intergovernmental Affairs to include this item in the 2009 State Legislature Package.

The Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairman thereupon declared the resolution duly passed and adopted this 17th day of February, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas H. Robertson

EXHIBIT "A"

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

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(b) ~~The liability of a~~ A first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure is jointly and severally liable with the previous owner for all ~~the~~ unpaid assessments that became due up to the time of transfer of title except for the unit's regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title. ~~prior to the mortgagee's acquisition of title is limited to the lesser of:~~

~~1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or~~

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

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

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

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

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

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