Executive Summary

HB 319 – Safe Harbor Changes Problematic

•This issue is NOT just about attorney fees -> Interest and Late fees go to association

- They help association pay for the increased REAL costs incurred as a direct consequence of delinquencies

> interest from delayed payments to vendors

> higher maintenance costs as preventative is delayed/avoided to assist with cash flow concerns

•Expansion to Safe Harbor provision in HB 319 is problematic because:

-**It raises the cost of living** by putting additional financial burden **on 4.5 million Floridians** living in Condos, HOAs, and Coops

- language is **RETROACTIVE** and not prospective.

➢Exposes successfully collected monies due association under current law from the banks to potential demands for refunds

-Enables and incentivizes banks to further game the system at expense of homeowners

•Do NOT provide a benefit to banks that you would not afford to the average Floridian

Current Legislation (1)

Payment Application Order Properly Recognizes Categories

In 1990, 2 years before ANY Safe Harbor provisions were ever added to the statutes, the legislature added in important language regarding how payment must be applied.

For example - 718.116 (3) - Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

This provision has THREE important features:
- It emphasizes ANY payment – regardless of its source of restrictive endorsement.
-It plainly shows an understanding of the difference between Interest, late fees, costs and reasonable attorney's fees, AND "assessments"
- it specifies ANY interest, ANY late fee, ANY costs… It does NOT limit payment application to those amounts that accrue after a person takes title to a property.

The implications from this section provide for the reimbursement for the association's collection efforts along with an incentive to be able to enforce its lien rights against delinquent owners.

Current Legislation (2)

Safe Harbor Clearly Protects ONLY Assessments

For example - 718.116 (1)(b) - The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the **unpaid assessments** that became due before the mortgagee's acquisition of title is limited to the lesser of:
i) [unpaid assessments for 12 months preceding the acquisition of title]; or
ii) One percent of the original mortgage debt…

Therefore, one must conclude that:
- If legislature had intended the limitation to be on the total dollar amount to be collected, it would have specified as much; AND
- The legislature had clearly recognized the need for associations to be able to pursue their own enforcement actions without any disincentive that would be created by limiting those recoveries from banks, or others.

Reading this provision in harmony with the section that pre-dates ***any Safe Harbor language***, the legislature recognized that ***in all cases*** interest, late fees, and costs and reasonable attorneys fees for collection are recovered by the association pursuant to payment application provisions. Therefore, they only limited liability on assessments, and therefore all other amounts are collected via payment application