

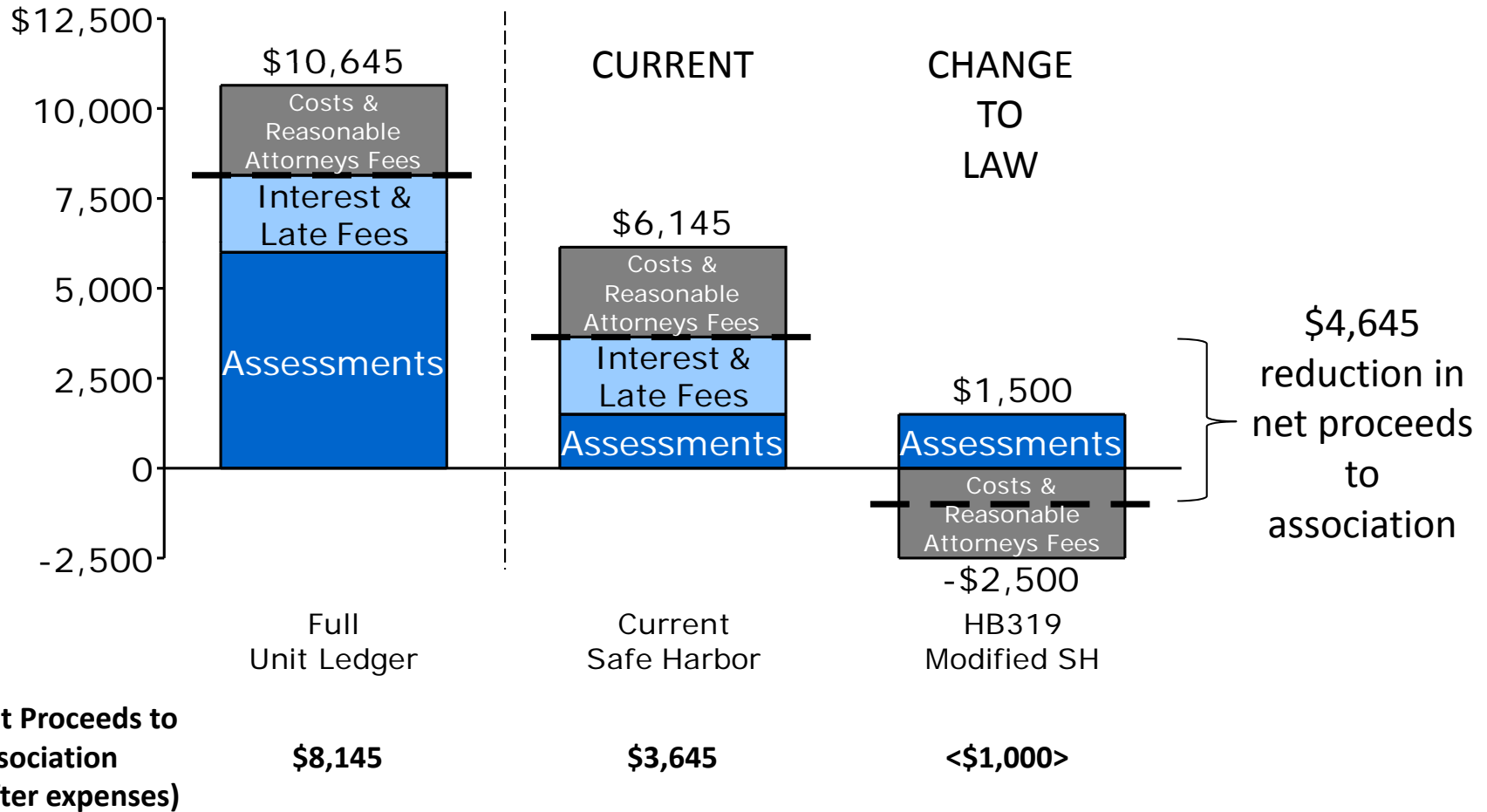
HB319

HB319 has become a highly controversial bill because of a provision that would bail out banks from having to pay interest, late fees, and costs and reasonable attorney fees for funds expended by a condominium or homeowners association in pursuit of a delinquent owner. Following are the facts:

- Under current law, a foreclosing bank remits to a condominium or homeowner association the lesser of 12 months or assessments or 1% of the original mortgage to satisfy the past due "unpaid assessments" of a delinquent unit. This is called a "Safe Harbor."
- HB319 would expand the Safe Harbor by including within it the amount the condominium or homeowner associations is owed for interest, late fees, and costs and reasonable attorney fees. This expanded Safe Harbor applies to the banks. Any person purchasing the foreclosed property, except for a bank, would remain liable for those costs (as is the case under the current statute).
- Courts have interpreted the current Safe Harbor provision differently. Some have ruled that interest, late fees, and costs and reasonable attorney fees are obligations due by the banks. Other courts have ruled that these are included within the Safe Harbor. But the FannieMae Closing guidelines for Florida, published December 20, 2011, clearly place the payment obligations on banks. "If the condo association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues."
- Notwithstanding the above guidelines, HB319 seeks to help the banks at the expense of Florida homeowners by seeking to apply the Safe Harbor interpretation retroactively. This exposes thousands of condominium and homeowner associations who have collected these funds legally under current law to demands for refunds or potential litigation.
- HB319 is a giant cost-shift from banks to individual homeowners. This would raise the cost of living for the struggling, yet fully paid-up homeowners. The companion legislation in the Senate, SB680, does not yet include this expansion of the Safe Harbor provision although it is understood that an amendment will be attempted in the Budget Committee.

Safe Harbor – Before and After

Under the HB319 MODIFIED Safe Harbor, an association would be \$4,645 worse off than under the current statute.



Assumptions: Monthly assessment = \$200, 30 months delinquency, Association simple interest at 18%, Late fee of \$25, and \$2,500 of costs and attorney fees for collection; First Mortgage for \$150,000. Therefore, lesser of 1% (\$1,500) or 12 months assessments (\$2,400) is \$1,500.