

By Senator Siplin

19-212-06

1   A bill to be entitled

2           An act relating to condominium associations;

3           amending s. 718.116, F.S.; providing that a

4           lien foreclosure action or an action to recover

5           a money judgment brought as a result of unpaid

6           condominium association assessments may be

7           brought only in instances meeting a monetary

8           threshold; providing that an association is not

9           entitled to recover attorney's fees in

10          foreclosure actions or in actions to recover a

11          money judgment brought as a result of unpaid

12          association assessments; requiring an

13          association to provide 180 days' written notice

14          of its intention to foreclose its lien before

15          foreclosure judgment may be entered; providing

16          an effective date.

17

18 Be It Enacted by the Legislature of the State of Florida:

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20           Section 1. Subsection (3), paragraph (b) of subsection

21           (5), and subsections (6) and (8) of section 718.116, Florida

22           Statutes, are amended to read:

23                   718.116 Assessments; liability; lien and priority;

24           interest; collection.--

25                   (3) Assessments and installments on them which are not

26           paid when due bear interest at the rate provided in the

27           declaration, from the due date until paid. This rate may not

28           exceed the rate allowed by law, and, if no rate is provided in

29           the declaration, interest shall accrue at the rate of 18

30           percent per year. Also, if the declaration or bylaws so

31           provide, the association may charge an administrative late fee

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 | in addition to such interest, in an amount not to exceed the  
2 | greater of \$25 or 5 percent of each installment of the  
3 | assessment for each delinquent installment that the payment is  
4 | late. Any payment received by an association shall be applied  
5 | first to any interest accrued by the association, then to any  
6 | administrative late fee, then to any costs ~~and reasonable~~  
7 | ~~attorney's fees~~ incurred in collection, and then to the  
8 | delinquent assessment. The foregoing shall be applicable  
9 | notwithstanding any restrictive endorsement, designation, or  
10 | instruction placed on or accompanying a payment. A late fee  
11 | shall not be subject to the provisions in chapter 687 or s.  
12 | 718.303(3).

13 | (5)

14 | (b) To be valid, a claim of lien must state the  
15 | description of the condominium parcel, the name of the record  
16 | owner, the name and address of the association, the amount  
17 | due, and the due dates. It must be executed and acknowledged  
18 | by an officer or authorized agent of the association. No such  
19 | lien shall be effective longer than 1 year after the claim of  
20 | lien was recorded unless, within that time, an action to  
21 | enforce the lien is commenced. The 1-year period shall  
22 | automatically be extended for any length of time during which  
23 | the association is prevented from filing a foreclosure action  
24 | by an automatic stay resulting from a bankruptcy petition  
25 | filed by the parcel owner or any other person claiming an  
26 | interest in the parcel. The claim of lien shall secure all  
27 | unpaid assessments which are due and which may accrue  
28 | subsequent to the recording of the claim of lien and prior to  
29 | the entry of a certificate of title, as well as interest and  
30 | all reasonable costs ~~and attorney's fees~~ incurred by the  
31 | association incident to the collection process. Upon payment

1 in full, the person making the payment is entitled to a  
2 satisfaction of the lien.

3 (6)(a) The association may bring an action in its name  
4 to foreclose a lien for assessments in the manner a mortgage  
5 of real property is foreclosed and may also bring an action to  
6 recover a money judgment for the unpaid assessments without  
7 waiving any claim of lien. A lien foreclosure action or an  
8 action to recover a money judgment brought as a result of  
9 unpaid condominium association assessments may be brought only  
10 in those instances in which the amount in question equals or  
11 exceeds \$2,500. The association is not entitled to recover ~~its~~  
12 ~~reasonable~~ attorney's fees incurred in either a lien  
13 foreclosure action or an action to recover a money judgment  
14 for unpaid assessments.

15 (b) No foreclosure judgment may be entered until at  
16 least 180 ~~30~~ days after the association gives written notice  
17 to the unit owner of its intention to foreclose its lien to  
18 collect the unpaid assessments. ~~If this notice is not given at~~  
19 ~~least 30 days before the foreclosure action is filed, and if~~  
20 ~~the unpaid assessments, including those coming due after the~~  
21 ~~claim of lien is recorded, are paid before the entry of a~~  
22 ~~final judgment of foreclosure, the association shall not~~  
23 ~~recover attorney's fees or costs.~~ The notice must be given by  
24 delivery of a copy of it to the unit owner or by certified or  
25 registered mail, return receipt requested, addressed to the  
26 unit owner at his or her last known address; and, upon such  
27 mailing, the notice shall be deemed to have been given, and  
28 the court shall proceed with the foreclosure action ~~and may~~  
29 ~~award attorney's fees and costs as permitted by law.~~ The  
30 notice requirements of this subsection are satisfied if the  
31 unit owner records a notice of contest of lien as provided in

1 subsection (5). The notice requirements of this subsection do  
2 not apply if an action to foreclose a mortgage on the  
3 condominium unit is pending before any court; if the rights of  
4 the association would be affected by such foreclosure; and if  
5 actual, constructive, or substitute service of process has  
6 been made on the unit owner.

7 (c) If the unit owner remains in possession of the  
8 unit after a foreclosure judgment has been entered, the court,  
9 in its discretion, may require the unit owner to pay a  
10 reasonable rental for the unit. If the unit is rented or  
11 leased during the pendency of the foreclosure action, the  
12 association is entitled to the appointment of a receiver to  
13 collect the rent. The expenses of the receiver shall be paid  
14 by the party which does not prevail in the foreclosure action.

15 (d) The association has the power to purchase the  
16 condominium parcel at the foreclosure sale and to hold, lease,  
17 mortgage, or convey it.

18 (8) Within 15 days after receiving a written request  
19 therefor from a unit owner purchaser, or mortgagee, the  
20 association shall provide a certificate signed by an officer  
21 or agent of the association stating all assessments and other  
22 moneys owed to the association by the unit owner with respect  
23 to the condominium parcel. Any person other than the owner who  
24 relies upon such certificate shall be protected thereby. A  
25 summary proceeding pursuant to s. 51.011 may be brought to  
26 compel compliance with this subsection, ~~and in any such action~~  
27 ~~the prevailing party is entitled to recover reasonable~~  
28 ~~attorney's fees~~. Notwithstanding any limitation on transfer  
29 fees contained in s. 718.112(2)(i), the association or its  
30 authorized agent may charge a reasonable fee for the  
31 preparation of the certificate.

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Section 2. This act shall take effect July 1, 2006.

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SENATE SUMMARY

Limits a lien foreclosure or an action to recover a money judgment brought as a result of an unpaid assessment by a condominium association to those instances in which the amount in question equals or exceeds \$2,500. Requires a written notice of 180 days rather than 30 days before entry of a foreclosure judgment. Removes authorization for the association to recover attorney's fees and costs.