

Amendment No.

CHAMBER ACTION

Senate

House

.  
.
.  
.



1 Representative Sands offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 720.3085, Florida Statutes, is created  
6 to read:

7 720.3085 Payment for assessments; lien claims.--

8 (1) A parcel owner, regardless of how his or her title to  
9 property has been acquired, including by purchase at a  
10 foreclosure sale or by deed in lieu of foreclosure, is liable  
11 for all assessments that come due while he or she is the parcel  
12 owner. The parcel owner's liability for assessments may not be  
13 avoided by waiver or suspension of the use or enjoyment of any  
14 common area or by abandonment of the parcel upon which the  
15 assessments are made.

Amendment No.

16       (2) A parcel owner is jointly and severally liable with  
17 the previous parcel owner for all unpaid assessments that came  
18 due up to the time of transfer of title. This liability is  
19 without prejudice to any right the present parcel owner may have  
20 to recover any amounts paid by the present owner from the  
21 previous owner.

22       (3) Assessments and installments on assessments that are  
23 not paid when due bear interest from the due date until paid at  
24 the rate provided in the declaration of covenants or the bylaws  
25 of the association, which rate may not exceed the rate allowed  
26 by law. If no rate is provided in the declaration or bylaws,  
27 interest accrues at the rate of 18 percent per year.

28       (a) If the declaration or bylaws so provide, the  
29 association may also charge an administrative late fee in an  
30 amount not to exceed the greater of \$25 or 5 percent of the  
31 amount of each installment that is paid past the due date.

32       (b) Any payment received by an association and accepted  
33 shall be applied first to any interest accrued, then to any  
34 administrative late fee, then to any costs and reasonable  
35 attorney's fees incurred in collection, and then to the  
36 delinquent assessment. This paragraph applies notwithstanding  
37 any restrictive endorsement, designation, or instruction placed  
38 on or accompanying a payment. A late fee is not subject to the  
39 provisions of chapter 687 and is not a fine.

40       (4) A homeowners' association may not file a claim of lien  
41 against a parcel for unpaid assessments unless a written notice  
42 or demand for past due assessments as well as any other amounts

768683

4/23/2007 1:57:24 PM

Amendment No.

43 owed to the association pursuant to its governing documents has  
44 been made by the association. The written notice or demand must:

45 (a) Provide the owner with 45 days to make payment for all  
46 amounts due, including, but not limited to, any attorney's fees  
47 and actual costs associated with the preparation and delivery of  
48 the written demand.

49 (b) Be sent by registered or certified mail, return  
50 receipt requested, and by first-class United States Mail to the  
51 parcel owner at his or her last address as reflected in the  
52 records of the association, if the address is within the United  
53 States, and to parcel owner subject to the demand at the address  
54 of the parcel if the owner's address as reflected in the records  
55 of the association is not the parcel address. If the address  
56 reflected in the records is outside the United States then  
57 sending the notice to that address and to the parcel address  
58 only by first-class United States mail is sufficient.

59 (5) The association may bring an action in its name to  
60 foreclose a lien for unpaid assessments secured by a lien in the  
61 same manner that a mortgage of real property is foreclosed and  
62 may also bring an action to recover a money judgment for the  
63 unpaid assessments without waiving any claim of lien. Such  
64 action may not be brought until 45 days after the parcel owner  
65 has been provided notice of the association's intent to  
66 foreclose and collect the unpaid amount.

67 (a) The association may recover any reasonable attorney's  
68 fees incurred in a lien foreclosure action or in an action to  
69 recover a money judgment for the unpaid assessments.

768683

4/23/2007 1:57:24 PM

Amendment No.

70       (b) The association may purchase the parcel at the  
71 foreclosure sale and hold, lease, mortgage, or convey the  
72 parcel.

73       (6) If after service of a summons on a complaint to  
74 foreclose a lien, the parcel is not the subject of a mortgage  
75 foreclosure or a notice of tax certificate sale, or the parcel  
76 owner is not a debtor in bankruptcy proceedings, the parcel  
77 owner may serve and file with the court a qualifying offer at  
78 any time before the entry of a foreclosure judgment. For  
79 purposes of this subsection, the term "qualifying offer" means a  
80 written offer to pay all amounts secured by the lien of the  
81 association plus interest accruing during the pendency of the  
82 offer at the rate of interest provided in this section. The  
83 parcel owner may make only one qualifying offer during the  
84 pendency of a foreclosure action.

85       (a) The parcel owner shall deliver a copy of the filed  
86 qualifying offer to the association's attorney by hand delivery  
87 or by certified mail, return receipt requested.

88       (b) The parcel owner's filing of the qualifying offer with  
89 the court stays the foreclosure action for the period stated in  
90 the qualifying offer, which may not exceed 60 days, to permit  
91 the parcel owner to pay the qualifying offer to the association  
92 plus any interest accruing during the pendency of the offer.

93       (c) The qualifying offer of the parcel owner must be in  
94 writing, be signed by the owner of the parcel and the spouse of  
95 the owner if the spouse holds a homestead interest in the  
96 parcel, be acknowledged by a notary public, state the total  
97 amount due the association, state that the total amount due the

768683

4/23/2007 1:57:24 PM

Amendment No.

98 association is secured by the lien of the association, state  
99 that the association is entitled to foreclose the lien and  
100 obtain a foreclosure judgment for the total amount due if the  
101 parcel owner breaches the qualified offer, state that the parcel  
102 owner will not endanger the priority of the lien of the  
103 association or the amounts secured by the lien, and state the  
104 actual date or dates the association will receive the total  
105 amount due from the parcel owner. If the parcel owner makes a  
106 qualifying offer under this subsection, the association may not  
107 add the cost of any legal fees acquired by the association  
108 within the period of the stay other than costs acquired in  
109 defense of a mortgage foreclosure action concerning the parcel,  
110 a bankruptcy proceeding in which the parcel owner is a debtor,  
111 or in response to filings by a party other than the association  
112 in the lien foreclosure action of the association.

113 (d) If the parcel owner breaches the qualifying offer, the  
114 stay shall be vacated and the association may proceed in its  
115 action to obtain a foreclosure judgment against the parcel and  
116 the parcel owners for the amount in the qualifying offer and any  
117 interest amounts accruing after the date of the qualifying  
118 offer.

119 Section 2. This act shall take effect July 1, 2007.

120

121 ===== T I T L E A M E N D M E N T =====

122 Remove the entire title and insert:

123 A bill to be entitled

124 An act relating to homeowners' associations; creating s.

125 720.3085, F.S.; providing that a parcel owner is liable for all  
768683

4/23/2007 1:57:24 PM

HOUSE AMENDMENT

Bill No. CS/HB 1465

Amendment No.

126 assessments on a parcel; providing for the payment of interest  
127 and late fees on unpaid assessments; prioritizing the  
128 application of any payment received; prohibiting the placement  
129 of a restriction statement on the payment; providing for the  
130 filing of a claim of lien for unpaid assessments; providing for  
131 the foreclosure of the lien; providing for notice to the owner;  
132 providing for a qualifying offer from the owner; providing an  
133 effective date.

768683

4/23/2007 1:57:24 PM