

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1465 Overdue Assessments and Fees
SPONSOR(S): Sands
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>6 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Blalock</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Condominium associations and cooperative associations have the power to make and collect assessments. These assessments allow the association to carry out its responsibility for the management, operation, and management of the association property and common elements.

This bill amends the Condominium Act to provide that a condominium association must provide a unit owner written notice 30 days prior to initiating a foreclosure action against that unit owner to collect unpaid assessments secured by a lien.

This bill amends the Condominium Act and the Cooperative Act to provide that if a unit owner makes a qualifying offer before the entry of a foreclosure judgment, then the association must suspend the foreclosure action or collection efforts and allow the unit owner to pay all amounts due plus interest within 60 days.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Condominium associations are regulated by ch. 718, F.S., and cooperative associations are regulated by ch. 719, F.S. Condominium associations and cooperative associations have the power to make and collect assessments.¹ These assessments allow the association to carry out its responsibility for the operation and management of the association property and common elements. The ability of an association to levy and collect assessments is part of the plan to maintain the properties for the benefit of all of the association members who own and reside in a condominium or cooperative. To be ultimately successful, each owner must pay the share for which he or she is responsible. When an association member does not pay his or her assessments, then the association has the authority to issue a lien on the member's property to secure payment. This authority is granted to associations in current law.²

Section 718.116(6)(b), F.S., relating to condominium associations, provides that no foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect any unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association cannot recover attorney's fees or costs. The notice must be given by delivery of a copy to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address.

There are no statutory provisions in ch. 719, F.S., requiring a cooperative association to give notice to an association member when there is a claim of lien on their property or prior to foreclosing on the lien, and there are no provisions relating to the payment of attorney's fees incurred during these foreclosure cases. Section 719.108(5), F.S., provides that liens for rents and assessments on cooperative units can be foreclosed by suit in the name of the cooperative association.

Effect of Bill

This bill amends s. 718.116(6), F.S., to provide that condominium associations may not initiate a foreclosure action against a condominium unit owner earlier than 30 days after the association has given the unit owner written notice of the association's intent to foreclose its lien for unpaid assessments. This written notice is a condition precedent to the filing of any foreclosure action, and therefore a foreclosure action must be dismissed by the court if this notice requirement is not met. This bill also provides that the written notice must be hand delivered to the unit owner or sent electronically if the unit owner has agreed to receive association notices by an electronic format. If hand delivery or electronic transmission is not possible then the written notice must be sent by registered or certified mail and regular mail to the unit owner at the last address of the property that is subject to the lien. This bill also provides notice requirements for when the unit owner has given an address that is outside the United States. In these situations, the written notice requirement is satisfied by sending a copy of the written notice to the unit owner by regular mail at the given address, and by sending a copy to the

¹ Sections 718.111(4) and 719.104(5), F.S.

² Sections 718.116 and 719.108(4), F.S.

property address by registered or certified mail and regular mail. If the mailing is completed in compliance with the above provisions, then the notice is deemed to have been given and is deemed to have been received by the unit owner 5 days after the date of the mailing, hand delivery, or electronic transmission.

This bill amends ss. 718.116(6) and 719.108(5), F.S., to provide that if a condominium or cooperative unit owner makes a "qualified offer"³ at any time before the entry of a foreclosure judgment, then the association must suspend its foreclosure action or collection efforts and agree to allow the unit owner to pay all amounts due plus interest within 60 days after the receipt of the qualifying offer. This bill provides that the qualifying offer must be in writing and included in an agreement prepared by the association's counsel. The condominium or cooperative association cannot add additional legal fees within the 60-day period other than a reasonable amount to prepare the written agreement. The qualifying offer to the condominium or cooperative association must be delivered to the attorney of the association by hand delivery or certified or registered mail. An offer is not considered a qualifying offer if a notice of contest of lien is recorded or if the offer is made more than 8 months after the association records the lien unless a foreclosure action has already been filed.

C. SECTION DIRECTORY:

Section 1 amends s. 718.116(6), F.S., relating to foreclosure actions by a condominium association in order to collect unpaid assessments.

Section 2 amends s. 719.108(5), F.S., relating to foreclosure actions by a cooperative association in order to collect unpaid assessments.

Section 3 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could require condominium associations and cooperative associations to pay an additional postal fee of \$2.50 for certified mail or a minimum of \$7.90 for registered mail in order to give notice of their intent to foreclose on a lien to collect unpaid assessments secured by the lien.⁴ The bill will

³ This bill defines a "qualified offer" to mean a written offer to pay all amounts secured by the lien of the association plus the rate of interest stated in the governing documents for delinquent accounts, or if no such rate is stated, 10% interest.

⁴ Postage rates were obtained from the U.S. Postal Service's website (www.usps.com).

require a unit owner to pay these same postal fees in order to meet the requirements for properly delivering a qualifying offer.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

The chair of the Safety & Security Council chose not to submit any statement regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 21, 2007, the Committee on Courts adopted one amendment to this bill. The amendment revised the bill to provide that if assessments levied against a condominium unit owner by the association are paid within the required 30-day notice period prior to a foreclosure judgment, then the owner will have 90 days from the date the notice was received to pay all attorney's fees assessed against the unit owner as a result of the association's efforts to collect the debt that resulted in the lien. The bill was then reported favorably with an amendment.

On April 11, 2007, the Safety & Security Council adopted a substitute amendment to the amendment adopted by the Committee on Courts. The amendment made the following revisions to the bill:

- Provided that a foreclosure action by a condominium association cannot begin earlier than 30 days after the association has given the unit owner written notice of the association's intent to foreclose its lien for unpaid assessments;
- Provided certain requirements that the association must follow when delivering the written notice to the unit owner;
- Provided that when a condominium or cooperative unit owner makes an offer to pay unpaid assessments, then the foreclosure action must be suspended for 60 days to allow the unit owner to pay all amounts due; and
- Provided certain requirements for executing the offer of repayment for the unpaid assessments and for the delivery thereof.

This bill was then reported favorably with a council substitute. This analysis is drafted to the council substitute.