

1 A bill to be entitled
 2 An act relating to condominiums and cooperatives; amending
 3 s. 718.116, F.S.; prohibiting a condominium association
 4 from initiating a foreclosure action for assessments owed
 5 under certain circumstances; providing procedures for
 6 delivery of the written notice to the unit owner;
 7 providing an exception; requiring a condominium
 8 association to suspend a foreclosure action or collection
 9 effort and agree to allow a unit owner to pay all amounts
 10 due plus interest under certain circumstances; defining
 11 the term "qualifying offer"; providing procedures for
 12 accepting a qualifying offer; providing an exception;
 13 amending s. 719.108, F.S.; requiring a cooperative
 14 association to suspend a foreclosure action or collection
 15 effort and agree to allow a unit owner to pay all amounts
 16 due plus interest under certain circumstances; defining
 17 the term "qualifying offer"; providing procedures for
 18 accepting a qualifying offer; providing an exception;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (6) of section 718.116, Florida
 24 Statutes, is amended to read:

25 718.116 Assessments; liability; lien and priority;
 26 interest; collection.--

27 (6) (a) The association may bring an action in its name to
 28 foreclose a lien for assessments in the manner a mortgage of

29 real property is foreclosed and may also bring an action to
30 recover a money judgment for the unpaid assessments without
31 waiving any claim of lien. The association is entitled to
32 recover its reasonable attorney's fees incurred in either a lien
33 foreclosure action or an action to recover a money judgment for
34 unpaid assessments.

35 (b) A foreclosure action may not be initiated earlier than
36 30 days after the association has given the unit owner written
37 notice of the association's intent to foreclose its lien to
38 collect the unpaid assessments secured by the lien. The written
39 notice is a condition precedent to the filing of any foreclosure
40 action.

41 1. The written notice may be given by hand delivery to the
42 unit owner or sent by electronic transmission if the unit owner
43 has agreed to receive association notice by electronic means or
44 in an electronic format. If hand delivery is not possible or the
45 owner has not consented to receive association notice by
46 electronic means or in an electronic format, written notice must
47 be sent by registered or certified mail and regular mail to the
48 unit owner at the last address given to the association by the
49 unit owner, if the address is within the United States, and to
50 the address of the property that is subject to the lien.

51 2. If the unit owner has given the association an
52 alternate address outside the United States, the written notice
53 requirement is satisfied by sending a copy of the written notice
54 to the unit owner by regular mail at the alternate address and
55 by sending a copy to the property address by registered or
56 certified mail and regular mail.

57 3. If the mailing is completed in compliance with this
58 paragraph, the written notice is deemed to have been given and
59 is deemed to have been received by the unit owner 5 days after
60 the date of mailing, hand delivery, or electronic transmission.
61 Notwithstanding this paragraph, the notice requirements are
62 inapplicable if a unit owner records a notice of contest of lien
63 or if an action to foreclose a mortgage on the property is
64 pending before any court. ~~No foreclosure judgment may be entered~~
65 ~~until at least 30 days after the association gives written~~
66 ~~notice to the unit owner of its intention to foreclose its lien~~
67 ~~to collect the unpaid assessments. If this notice is not given~~
68 ~~at least 30 days before the foreclosure action is filed, and if~~
69 ~~the unpaid assessments, including those coming due after the~~
70 ~~claim of lien is recorded, are paid before the entry of a final~~
71 ~~judgment of foreclosure, the association shall not recover~~
72 ~~attorney's fees or costs. The notice must be given by delivery~~
73 ~~of a copy of it to the unit owner or by certified or registered~~
74 ~~mail, return receipt requested, addressed to the unit owner at~~
75 ~~his or her last known address; and, upon such mailing, the~~
76 ~~notice shall be deemed to have been given, and the court shall~~
77 ~~proceed with the foreclosure action and may award attorney's~~
78 ~~fees and costs as permitted by law. The notice requirements of~~
79 ~~this subsection are satisfied if the unit owner records a notice~~
80 ~~of contest of lien as provided in subsection (5). The notice~~
81 ~~requirements of this subsection do not apply if an action to~~
82 ~~foreclose a mortgage on the condominium unit is pending before~~
83 ~~any court; if the rights of the association would be affected by~~
84 ~~such foreclosure; and if actual, constructive, or substitute~~

85 ~~service of process has been made on the unit owner.~~

86 (c) If the unit owner remains in possession of the unit
 87 after a foreclosure judgment has been entered, the court, in its
 88 discretion, may require the unit owner to pay a reasonable
 89 rental for the unit. If the unit is rented or leased during the
 90 pendency of the foreclosure action, the association is entitled
 91 to the appointment of a receiver to collect the rent. The
 92 expenses of the receiver shall be paid by the party that ~~which~~
 93 does not prevail in the foreclosure action.

94 (d) The association may ~~has the power to~~ purchase the
 95 condominium parcel at the foreclosure sale and to hold, lease,
 96 mortgage, or convey it.

97 (e)1. If the unit owner makes a qualifying offer at any
 98 time before the entry of a foreclosure judgment, the association
 99 shall suspend its foreclosure action or collection efforts and
 100 agree to allow the unit owner to pay all amounts due plus
 101 interest within 60 days after receipt of the qualifying offer.

102 2. For purposes of this paragraph, the term "qualifying
 103 offer" means a written offer to pay all amounts secured by the
 104 lien of the association plus the rate of interest stated in the
 105 governing documents for delinquent accounts or, if no such rate
 106 is stated, 10 percent interest.

107 3. The unit owner's qualifying offer must be in writing.
 108 The offer must be included in an agreement prepared by the
 109 association's counsel which document must acknowledge that the
 110 amounts contained in the agreement are secured by the lien of
 111 the association. If the unit owner makes a qualifying offer
 112 under this paragraph, the association may not add additional

113 legal fees within the 60-day period other than a reasonable
 114 amount to prepare the written agreement required by this
 115 paragraph.

116 4. The qualifying offer to the association must be
 117 delivered to the attorney of the association by hand delivery or
 118 certified or registered mail and is not deemed received by the
 119 association until the offer is actually received by the
 120 attorney. Notwithstanding this subparagraph, an offer is not
 121 considered a qualifying offer if a notice of contest of lien is
 122 recorded or if the offer is made more than 8 months after the
 123 lien is recorded by the association unless a foreclosure action
 124 has already been filed.

125 Section 2. Subsection (5) of section 719.108, Florida
 126 Statutes, is amended to read:

127 719.108 Rents and assessments; liability; lien and
 128 priority; interest; collection; cooperative ownership.--

129 (5) (a) Liens for rents and assessments may be foreclosed
 130 by suit brought in the name of the association, in like manner
 131 as a foreclosure of a mortgage on real property. In any
 132 foreclosure, the unit owner shall pay a reasonable rental for
 133 the cooperative parcel, if so provided in the cooperative
 134 documents, and the plaintiff in the foreclosure is entitled to
 135 the appointment of a receiver to collect the rent. The
 136 association has the power, unless prohibited by the cooperative
 137 documents, to bid on the cooperative parcel at the foreclosure
 138 sale and to acquire and hold, lease, mortgage, or convey it.
 139 Suit to recover a money judgment for unpaid rents and
 140 assessments may be maintained without waiving the lien securing

141 them.

142 (b)1. If the unit owner makes a qualifying offer at any
143 time before the entry of a foreclosure judgment, the association
144 shall suspend its foreclosure action or collection efforts and
145 agree to allow the unit owner to pay all amounts due plus
146 interest within 60 days after receipt of the qualifying offer.

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148 offer" means a written offer to pay all amounts secured by the
149 lien of the association, plus the rate of interest stated in the
150 governing documents for delinquent accounts or, if no such rate
151 is stated, 10 percent interest.

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153 The offer must be included in an agreement prepared by the
154 association's counsel which document must acknowledge that the
155 amounts contained in the agreement are secured by the lien of
156 the association. If the unit owner makes a qualifying offer
157 under this paragraph, the association may not add additional
158 legal fees within the 60-day period other than a reasonable
159 amount to prepare the written agreement required by this
160 paragraph.

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162 delivered to the attorney of the association by hand delivery or
163 certified or registered mail and is not deemed received by the
164 association until the offer is actually received by the
165 attorney. Notwithstanding this subparagraph, an offer is not
166 considered a qualifying offer if a notice of contest of lien is
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168 lien is recorded by the association unless a foreclosure action

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169 | has already been filed.

170 | Section 3. This act shall take effect July 1, 2007.