

1 A bill to be entitled
 2 An act relating to homeowners' associations; creating s.
 3 720.3085, F.S.; providing that a parcel owner is liable
 4 for all assessments on a parcel; providing for the payment
 5 of interest and late fees on unpaid assessments;
 6 prioritizing the application of any payment received;
 7 prohibiting the placement of a restriction statement on
 8 the payment; providing for the filing of a claim of lien
 9 for unpaid assessments; providing for the foreclosure of
 10 the lien; providing for notice to the owner; providing for
 11 a qualifying offer from the owner; providing an effective
 12 date.

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

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 16 Section 1. Section 720.3085, Florida Statutes, is created
 17 to read:

18 720.3085 Payment for assessments; lien claims.--

19 (1) A parcel owner, regardless of how his or her title to
 20 property has been acquired, including by purchase at a
 21 foreclosure sale or by deed in lieu of foreclosure, is liable
 22 for all assessments that come due while he or she is the parcel
 23 owner. The parcel owner's liability for assessments may not be
 24 avoided by waiver or suspension of the use or enjoyment of any
 25 common area or by abandonment of the parcel upon which the
 26 assessments are made.

27 (2) A parcel owner is jointly and severally liable with
 28 the previous parcel owner for all unpaid assessments that came

29 due up to the time of transfer of title. This liability is
30 without prejudice to any right the present parcel owner may have
31 to recover any amounts paid by the present owner from the
32 previous owner.

33 (3) Assessments and installments on assessments that are
34 not paid when due bear interest from the due date until paid at
35 the rate provided in the declaration of covenants or the bylaws
36 of the association, which rate may not exceed the rate allowed
37 by law. If no rate is provided in the declaration or bylaws,
38 interest accrues at the rate of 18 percent per year.

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

43 (b) Any payment received by an association and accepted
44 shall be applied first to any interest accrued, then to any
45 administrative late fee, then to any costs and reasonable
46 attorney's fees incurred in collection, and then to the
47 delinquent assessment. This paragraph applies notwithstanding
48 any restrictive endorsement, designation, or instruction placed
49 on or accompanying a payment. A late fee is not subject to the
50 provisions of chapter 687 and is not a fine.

51 (4) A homeowners' association may not file a claim of lien
52 against a parcel for unpaid assessments unless a written notice
53 or demand for past due assessments as well as any other amounts
54 owed to the association pursuant to its governing documents has
55 been made by the association. The written notice or demand must:

56 (a) Provide the owner with 45 days to make payment for all

57 amounts due, including, but not limited to, any attorney's fees
58 and actual costs associated with the preparation and delivery of
59 the written demand.

60 (b) Be sent by registered or certified mail, return
61 receipt requested, and by first-class United States Mail to the
62 parcel owner at his or her last address as reflected in the
63 records of the association, if the address is within the United
64 States, and to the parcel owner subject to the demand at the
65 address of the parcel if the owner's address as reflected in the
66 records of the association is not the parcel address. If the
67 address reflected in the records is outside the United States,
68 then sending the notice to that address and to the parcel
69 address by first-class United States mail is sufficient.

70 (5) The association may bring an action in its name to
71 foreclose a lien for unpaid assessments secured by a lien in the
72 same manner that a mortgage of real property is foreclosed and
73 may also bring an action to recover a money judgment for the
74 unpaid assessments without waiving any claim of lien. Such
75 action may not be brought until 45 days after the parcel owner
76 has been provided notice of the association's intent to
77 foreclose and collect the unpaid amount.

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

81 (b) The association may purchase the parcel at the
82 foreclosure sale and hold, lease, mortgage, or convey the
83 parcel.

84 (6) If after service of a summons on a complaint to

85 foreclose a lien the parcel is not the subject of a mortgage
86 foreclosure or a notice of tax certificate sale, or the parcel
87 owner is not a debtor in bankruptcy proceedings, the parcel
88 owner may serve and file with the court a qualifying offer at
89 any time before the entry of a foreclosure judgment. For
90 purposes of this subsection, the term "qualifying offer" means a
91 written offer to pay all amounts secured by the lien of the
92 association plus interest accruing during the pendency of the
93 offer at the rate of interest provided in this section. The
94 parcel owner may make only one qualifying offer during the
95 pendency of a foreclosure action.

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

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

104 (c) The qualifying offer of the parcel owner must be in
105 writing, be signed by the owner of the parcel and the spouse of
106 the owner if the spouse holds a homestead interest in the
107 parcel, be acknowledged by a notary public, state the total
108 amount due the association, state that the total amount due the
109 association is secured by the lien of the association, state
110 that the association is entitled to foreclose the lien and
111 obtain a foreclosure judgment for the total amount due if the
112 parcel owner breaches the qualifying offer, state that the

113 parcel owner will not endanger the priority of the lien of the
114 association or the amounts secured by the lien, and state the
115 actual date or dates the association will receive the total
116 amount due from the parcel owner. If the parcel owner makes a
117 qualifying offer under this subsection, the association may not
118 add the cost of any legal fees incurred by the association
119 within the period of the stay other than costs acquired in
120 defense of a mortgage foreclosure action concerning the parcel,
121 a bankruptcy proceeding in which the parcel owner is a debtor,
122 or in response to filings by a party other than the association
123 in the lien foreclosure action of the association.

124 (d) If the parcel owner breaches the qualifying offer, the
125 stay shall be vacated and the association may proceed in its
126 action to obtain a foreclosure judgment against the parcel and
127 the parcel owners for the amount in the qualifying offer and any
128 amounts accruing after the date of the qualifying offer.

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