

Bill No. SB 1844

Barcode 033088

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Haridopolos)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

(6)(a) The association may bring an action in its name
to foreclose a lien for assessments in the manner a mortgage
of real property is foreclosed and may also bring an action to
recover a money judgment for the unpaid assessments without
waiving any claim of lien. The association is entitled to
recover its reasonable attorney's fees incurred in either a
lien foreclosure action or an action to recover a money
judgment for unpaid assessments.

(b) A foreclosure action may not be initiated earlier
than 30 days after the association has given the unit owner

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1 written notice of the association's intent to foreclose its
2 lien to collect the unpaid assessments secured by the lien.
3 The written notice is a condition precedent to the filing of
4 any foreclosure action.

5 1. The written notice may be given by hand delivery to
6 the unit owner or sent by electronic transmission if the unit
7 owner has agreed to receive association notice by an
8 electronic format. If hand delivery is not possible or the
9 owner has not consented to receive association notice by
10 electronic format, written notice must be sent by registered
11 or certified mail and regular mail to the unit owner at the
12 last address given to the association by the unit owner, if
13 the address is within the United States, and to the address of
14 the property that is subject to the lien.

15 2. If the unit owner has given the association an
16 alternate address outside the United States, the written
17 notice requirement is satisfied by sending a copy of the
18 written notice to the unit owner by regular mail at the
19 alternate address and by sending a copy to the property
20 address by registered or certified mail and regular mail.

21 3. If the mailing is completed in compliance with this
22 subsection, the written notice is deemed to have been given
23 and is deemed to have been received by the unit owner 5 days
24 after the date of mailing, hand delivery, or electronic
25 transmission. Notwithstanding this subsection, the notice
26 requirements are inapplicable if a unit owner records a notice
27 of contest of lien or if an action to foreclose a mortgage on
28 the property is pending before any court. ~~No foreclosure~~
29 judgment may be entered until at least 30 days after the
30 association gives written notice to the unit owner of its
31 intention to foreclose its lien to collect the unpaid

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1 ~~assessments. If this notice is not given at least 30 days~~
2 ~~before the foreclosure action is filed, and if the unpaid~~
3 ~~assessments, including those coming due after the claim of~~
4 ~~lien is recorded, are paid before the entry of a final~~
5 ~~judgment of foreclosure, the association shall not recover~~
6 ~~attorney's fees or costs. The notice must be given by~~
7 ~~delivery of a copy of it to the unit owner or by certified or~~
8 ~~registered mail, return receipt requested, addressed to the~~
9 ~~unit owner at his or her last known address; and, upon such~~
10 ~~mailing, the notice shall be deemed to have been given, and~~
11 ~~the court shall proceed with the foreclosure action and may~~
12 ~~award attorney's fees and costs as permitted by law. The~~
13 ~~notice requirements of this subsection are satisfied if the~~
14 ~~unit owner records a notice of contest of lien as provided in~~
15 ~~subsection (5). The notice requirements of this subsection do~~
16 ~~not apply if an action to foreclose a mortgage on the~~
17 ~~condominium unit is pending before any court; if the rights of~~
18 ~~the association would be affected by such foreclosure; and if~~
19 ~~actual, constructive, or substitute service of process has~~
20 ~~been made on the unit owner.~~

21 (c) If the unit owner remains in possession of the
22 unit after a foreclosure judgment has been entered, the court,
23 in its discretion, may require the unit owner to pay a
24 reasonable rental for the unit. If the unit is rented or
25 leased during the pendency of the foreclosure action, the
26 association is entitled to the appointment of a receiver to
27 collect the rent. The expenses of the receiver shall be paid
28 by the party that ~~which~~ does not prevail in the foreclosure
29 action.

30 (d) The association may ~~has the power to~~ purchase the
31 condominium parcel at the foreclosure sale and ~~to~~ hold, lease,

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1 mortgage, or convey it.

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

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

13 3. The unit owner's qualifying offer must be in
14 writing. The offer must be included in an agreement prepared
15 by the association's counsel which document must acknowledge
16 that the amounts contained therein are secured by the lien of
17 the association. If the unit owner makes a qualifying offer
18 under this paragraph, the association may not add additional
19 legal fees within the 60-day period other than a reasonable
20 amount to prepare the written agreement required by this
21 subsection.

22 4. The qualifying offer to the association must be
23 delivered to the attorney of the association by hand delivery
24 or certified or registered mail, and is not deemed received by
25 the association until the offer is actually received by the
26 attorney. Notwithstanding this subparagraph, an offer is not
27 considered a qualifying offer if a notice of contest of lien
28 is recorded or if the offer is made more than 8 months after
29 the lien is recorded by the association unless a foreclosure
30 action has already been filed.

31 Section 2. Subsection (5) of section 719.108, Florida

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1 Statutes, is amended to read:

2 719.108 Rents and assessments; liability; lien and
3 priority; interest; collection; cooperative ownership.--

4 (5)(a) Liens for rents and assessments may be
5 foreclosed by suit brought in the name of the association, in
6 like manner as a foreclosure of a mortgage on real property.
7 In any foreclosure, the unit owner shall pay a reasonable
8 rental for the cooperative parcel, if so provided in the
9 cooperative documents, and the plaintiff in the foreclosure is
10 entitled to the appointment of a receiver to collect the rent.
11 The association has the power, unless prohibited by the
12 cooperative documents, to bid on the cooperative parcel at the
13 foreclosure sale and to acquire and hold, lease, mortgage, or
14 convey it. Suit to recover a money judgment for unpaid rents
15 and assessments may be maintained without waiving the lien
16 securing them.

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

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

28 3. The unit owner's qualifying offer must be in
29 writing. The offer must be included in an agreement prepared
30 by the association's counsel which document must acknowledge
31 that the amounts contained therein are secured by the lien of

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1 the association. If the unit owner makes a qualifying offer
 2 under this paragraph, the association may not add additional
 3 legal fees within the 60-day period other than a reasonable
 4 amount to prepare the written agreement required by this
 5 subsection.

6 4. The qualifying offer to the association must be
 7 delivered to the attorney of the association by hand delivery
 8 or certified or registered mail and is not deemed received by
 9 the association until the offer is actually received by the
 10 attorney. Notwithstanding this subparagraph, an offer is not
 11 considered a qualifying offer if a notice of contest of lien
 12 is recorded or if the offer is made more than 8 months after
 13 the lien is recorded by the association unless a foreclosure
 14 action has already been filed.

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

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

19 And the title is amended as follows:

20 Delete everything before the enacting clause

22 and insert:

23 A bill to be entitled

24 An act relating to condominiums and

25 cooperatives; amending s. 718.116, F.S.;

26 prohibiting a condominium association from

27 initiating a foreclosure action for assessments

28 owed earlier than 30 days after the condominium

29 association has given the unit owner written

30 notice of the condominium association's intent

31 to foreclose its lien to collect the unpaid

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1 assessments secured by the lien; providing
2 procedures for delivery of the written notice
3 to the unit owner; providing an exception;
4 providing that if a unit owner makes a
5 qualifying offer, the condominium association
6 must suspend its foreclosure action or
7 collection efforts and agree to allow the unit
8 owner to pay all amounts due plus interest
9 within 60 days after receipt of the qualifying
10 offer; defining the term "qualifying offer";
11 providing procedures for acceptance of the
12 qualifying offer; providing an exception;
13 amending s. 719.108, F.S.; providing that if a
14 unit owner makes a qualifying offer, the
15 cooperative association must suspend its
16 foreclosure action or collection efforts and
17 agree to allow the unit owner to pay all
18 amounts due plus interest within 60 days after
19 receipt of the qualifying offer; defining the
20 term "qualifying offer"; providing procedures
21 for acceptance of the qualifying offer;
22 providing an exception; providing an effective
23 date.

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