

Bill No. CS for SB 1844

Barcode 440634

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|---------------|----------------|--------------|
|               | CHAMBER ACTION |              |
| <u>Senate</u> |                | <u>House</u> |

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Senator Ring moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

720.3085 Payment for assessments; lien claims.--

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

(2) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may

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1 have to recover any amounts paid by the present owner from the  
2 previous owner.

3 (3) Assessments and installments on assessments that  
4 are not paid when due bear interest from the due date until  
5 paid at the rate provided in the declaration of covenants or  
6 the bylaws of the association, which rate may not exceed the  
7 rate allowed by law. If no rate is provided in the declaration  
8 or bylaws, interest accrues at the rate of 18 percent per  
9 year.

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

14 (b) Any payment received by an association and  
15 accepted shall be applied first to any interest accrued, then  
16 to any administrative late fee, then to any costs and  
17 reasonable attorney's fees incurred in collection, and then to  
18 the delinquent assessment. This paragraph applies  
19 notwithstanding any restrictive endorsement, designation, or  
20 instruction placed on or accompanying a payment. A late fee is  
21 not subject to the provisions of chapter 687 and is not a  
22 fine.

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

29 (a) Provide the owner with 45 days to make payment for  
30 all amounts due, including, but not limited to, any attorney's  
31 fees and actual costs associated with the preparation and

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1 delivery of the written demand.

2       (b) Be sent by registered or certified mail, return  
3 receipt requested, and by first-class United States Mail to  
4 the parcel owner at his or her last address as reflected in  
5 the records of the association, if the address is within the  
6 United States, and to the parcel owner subject to the demand  
7 at the address of the parcel if the owner's address as  
8 reflected in the records of the association is not the parcel  
9 address. If the address reflected in the records is outside  
10 the United States, then sending the notice to that address and  
11 to the parcel address by first-class United States mail is  
12 sufficient.

13       (5) The association may bring an action in its name to  
14 foreclose a lien for unpaid assessments secured by a lien in  
15 the same manner that a mortgage of real property is foreclosed  
16 and may also bring an action to recover a money judgment for  
17 the unpaid assessments without waiving any claim of lien. Such  
18 action may not be brought until 45 days after the parcel owner  
19 has been provided notice of the association's intent to  
20 foreclose and collect the unpaid amount.

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

24       (b) The association may purchase the parcel at the  
25 foreclosure sale and hold, lease, mortgage, or convey the  
26 parcel.

27       (6) If after service of a summons on a complaint to  
28 foreclose a lien the parcel is not the subject of a mortgage  
29 foreclosure or a notice of tax certificate sale, or the parcel  
30 owner is not a debtor in bankruptcy proceedings, the parcel  
31 owner may serve and file with the court a qualifying offer at

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1 any time before the entry of a foreclosure judgment. For  
 2 purposes of this subsection, the term "qualifying offer" means  
 3 a written offer to pay all amounts secured by the lien of the  
 4 association plus interest accruing during the pendency of the  
 5 offer at the rate of interest provided in this section. The  
 6 parcel owner may make only one qualifying offer during the  
 7 pendency of a foreclosure action.

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

11 (b) The parcel owner's filing of the qualifying offer  
 12 with the court stays the foreclosure action for the period  
 13 stated in the qualifying offer, which may not exceed 60 days,  
 14 to permit the parcel owner to pay the qualifying offer to the  
 15 association plus any interest accruing during the pendency of  
 16 the offer.

17 (c) The qualifying offer of the parcel owner must be  
 18 in writing, be signed by the owner of the parcel and the  
 19 spouse of the owner if the spouse holds a homestead interest  
 20 in the parcel, be acknowledged by a notary public, state the  
 21 total amount due the association, state that the total amount  
 22 due the association is secured by the lien of the association,  
 23 state that the association is entitled to foreclose the lien  
 24 and obtain a foreclosure judgment for the total amount due if  
 25 the parcel owner breaches the qualifying offer, state that the  
 26 parcel owner will not endanger the priority of the lien of the  
 27 association or the amounts secured by the lien, and state the  
 28 actual date or dates the association will receive the total  
 29 amount due from the parcel owner. If the parcel owner makes a  
 30 qualifying offer under this subsection, the association may  
 31 not add the cost of any legal fees incurred by the association

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1 within the period of the stay other than costs acquired in  
 2 defense of a mortgage foreclosure action concerning the  
 3 parcel, a bankruptcy proceeding in which the parcel owner is a  
 4 debtor, or in response to filings by a party other than the  
 5 association in the lien foreclosure action of the association.

6 (d) If the parcel owner breaches the qualifying offer,  
 7 the stay shall be vacated and the association may proceed in  
 8 its action to obtain a foreclosure judgment against the parcel  
 9 and the parcel owners for the amount in the qualifying offer  
 10 and any amounts accruing after the date of the qualifying  
 11 offer.

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

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

16 And the title is amended as follows:

17 Delete everything before the enacting clause

19 and insert:

20 A bill to be entitled

21 An act relating to homeowners' associations;  
 22 creating s. 720.3085, F.S.; providing that a  
 23 parcel owner is liable for all assessments on a  
 24 parcel; providing for the payment of interest  
 25 and late fees on unpaid assessments;  
 26 prioritizing the application of any payment  
 27 received; prohibiting the placement of a  
 28 restriction statement on the payment; providing  
 29 for the filing of a claim of lien for unpaid  
 30 assessments; providing for the foreclosure of  
 31 the lien; providing for notice to the owner;

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providing for a qualifying offer from the  
owner; providing an effective date.