

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1844

INTRODUCER: Regulated Industries Committee and Senator Ring

SUBJECT: Condominiums and Cooperatives

DATE: April 11, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides that a foreclosure action condominium associations may not be initiated earlier than 30 days after the association has given the unit owner written notice of the association's intent to foreclose its lien to collect unpaid assessments that are secured by the lien. The bill specifies that the written notice is a condition precedent to the filing of a foreclosure action, and specifies means of providing the written notice to the unit owner of the association's intent to foreclose.

The bill requires that a condominium association and a cooperative association must suspend their foreclosure action or collection efforts and agree to permit the unit owner to pay all amounts due plus interest if the unit owner makes a qualifying offer at any time before the entry of a foreclosure judgment. The payment of the amount owed must be within 60 days after receipt of the qualifying offer.

The bill defines the term "qualifying offer" to means 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 not provided, at a 10 percent interest rate.

The bill requires that the qualifying offer must be prepared by the condominium association's or cooperative association's counsel and must include a written agreement that acknowledges that the amount offered is secured by the lien of the association. It prohibits the association from adding additional legal fees within the 60-day period if the unit owner makes a qualifying offer. The association may add a reasonable amount to prepare the written agreement.

The bill requires that the qualifying offer to the condominium association or cooperative association must be delivered to the attorney of the association by hand delivery or certified or registered mail. It also provides that the qualifying offer is not deemed received by the association until the offer is actually received by the attorney. The bill further specifies that the offer is not considered a qualifying offer if a notice of contest of lien is recorded or if the offer is made more than eight months after the lien is recorded by the association unless a foreclosure action has already been filed.

The bill provides an effective date of July 1, 2007.

This bill substantially amends sections 718.116 and 719.108, Florida Statutes.

II. Present Situation:

Condominiums

A condominium is the form of ownership of real property created under ch. 718, F.S., “which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium association may be a corporation for profit or a corporation not for profit.² The board of administration of a condominium is the board of directors or other representative body which is responsible for the administration of the association.³

Section 718.116(6)(a), F.S., permits an association to bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed. It also permits the association to bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association may also recover reasonable attorney's fees incurred in either action.

Section 718.116(6)(b), F.S., provides that no foreclosure judgment for a condominium association 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. The association cannot recover attorney's fees or costs if this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments are paid before the entry of a final judgment of foreclosure, including those coming due after the claim of lien is recorded. 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.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” as:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership

¹ Section 718.103(11), F.S.

² Section 718.104(4)(i) and 718.111(1)(a), F.S.

³ Section 718.103(4), F.S.

interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, an apartment unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁴

Section 719.108(5), F.S., gives cooperative associations the authority to initiate a law suit in its own name to foreclose for unpaid rents and assessments in the same manner as a foreclosure of a mortgage on real property.

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.

Interest on Attorney's Fees

Attorneys may charge a lawful rate of interest on liquidated fees and costs, either as provided in advance by written agreement or, in the absence of a written agreement, upon reasonable notice.⁵ According to the Florida Bar, a notice of 60 days would be reasonable.⁶ Attorneys may charge a interest rate at the statutorily allowable rate.⁷

Section 55.03, F.S., requires that the Chief Financial Officer set the statutory interest rate for judgments or decrees for the year beginning January 1. The statutory interest rate stated in a court judgment accrues on the judgment until it is paid. For 2007, the Chief Financial Officer, through the Department of Financial Services, established the statutory interest rate at 11.0% per annum or .0003014 per day.⁸

III. Effect of Proposed Changes:

Condominiums - Written Notice of Intent to Foreclose

The bill amends s. 718.116, F.S., to provide that a foreclosure action may not be initiated earlier than 30 days after the association has given the unit owner written notice of the association's intent to foreclose its lien to collect unpaid assessments that are secured by the lien. The bill specifies that the written notice is a condition precedent to the filing of a foreclosure action.

⁴ See ss. 719.106(1)(g) and 719.107, F.S.

⁵ See Opinion 86-2, The Florida Bar, April 15, 1986. A copy of the opinion may be found at: <http://www.floridabar.org/tfb/TFBETOpin.nsf/basic+view/0794574D89F7123085256B2F006CAB35?OpenDocument> (last visited April 4, 2007).

⁶ *Id.*

⁷ *The Florida Bar v. Fields*, 482 So.2d 1354 (Fla. 1986).

⁸ Statutory Interest rate information from the Department of Financial Services at: <http://www.fldfs.com/aadir/interest.htm> (last visited April 4, 2007).

The bill specifies three means of providing the written notice to the unit owner of the association's intent to foreclose. The written notice may be given to the unit owner by:

1. Hand delivery or sent by electronic transmission if the unit owner has agreed to receive the association notice by an electronic format.
2. Registered or certified mail and regular mail to the unit owner at the last address given to the association by the unit owner, if the address is within the United States, and to the address of the property that is subject to the lien if hand delivery is not possible or the unit owner has not agreed to receive notice by electronic format.
3. Regular mail to an alternate address outside the United States that was provided to the association by the unit owner, but a copy must also be sent to the property address by registered or certified mail and regular mail.

The bill provides that the notice requirement is deemed to have been received by the unit owner five days after the date of mailing, hand delivery, or electronic transmission.

Current law only requires that written be given by certified or registered mail to the last known address of the unit owner, and that the notice shall be deemed given after the notice is mailed. These provisions in current law are repealed by the bill.

The bill provides that the notice requirement does not apply if the unit if a unit owner records a notice of contest of lien or if an action to foreclose a mortgage on the property is pending before any court.

Condominiums - Attorney's Fees and Costs

The bill requires that the association suspend its foreclosure action or collection efforts and agree to permit the unit owner to pay all amounts due plus interest if the unit owner makes a qualifying offer at any time before the entry of a foreclosure judgment. The payment of the amount owed must be within 60 days after receipt of the qualifying offer.

The bill defines the term "qualifying 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. If the governing documents do not state a rate, the bill provides a 10 percent interest rate. The bill does not specify whether the 10 percent interest rate is per year, per month, or for some other period. The current statutory interest rate is 11 percent per year.⁹

The bill requires that the qualifying offer must be prepared by the association's counsel and must include a written agreement that acknowledges that the amount offered is secured by the lien of the association.

⁹ Section 55.03, F.S., requires that the Chief Financial Officer set the statutory interest rate for judgments or decrees for the year beginning January 1. The statutory interest rate stated in a court judgment accrues on the judgment until it is paid. For 2007, the Chief Financial Officer, through the Department of Financial Services, established the statutory interest rate at 11.0% per annum or .0003014 per day. Statutory Interest rate information from the Department of Financial Services at: <http://www.fldfs.com/aadir/interest.htm> (last visited April 10, 2007).

The bill prohibits the association from adding additional legal fees within the 60 day period if the unit owner makes a qualifying offer. The association may add a reasonable amount to prepare the written agreement.

In effect, if a unit owner's attorney prepares and submits an offer to settle the lien dispute for the full amount, the offer would not constitute a qualifying offer under the provisions of the bill and the association could continue the foreclosure action and its collection efforts and continue to add additional legal fees.

The bill requires that the qualifying offer to the association must be delivered to the attorney of the association by hand delivery or certified or registered mail. It also provides that the qualifying offer is not deemed received by the association until the offer is actually received by the attorney.

The bill further specifies that the offer is not considered a qualifying offer if a notice of contest of lien is recorded or if the offer is made more than eight months after the lien is recorded by the association unless a foreclosure action has already been filed.

The bill repeals the provision in s. 718.116, F.S., that prohibits the association from recovering attorney's fees or costs if the notice of intent to foreclose 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 bill also repeals the provision in s. 718.116, F.S., that specifies that the notice requirements do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court, if the rights of the association would be affected by such foreclosure, and if actual, constructive, or substitute service of process has been made on the unit owner.

Cooperative Associations - Attorney's Fees and Costs

The bill amends s. 719.108, F.S., to require that the cooperative association suspend its foreclosure action or collection efforts and agree to permit the unit owner to pay all amounts due plus interest if the unit owner makes a qualifying offer at any time before the entry of a foreclosure judgment. The payment of the amount owed must be within 60 days after receipt of the qualifying offer.

The bill defines the term "qualifying 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. If the governing documents do not state a rate, the bill provides a 10 percent interest rate. The bill does not specify whether the 10 percent interest rate is per year, per month, or for some other period. The current statutory interest rate is 11 percent per year.¹⁰

The bill requires that the qualifying offer must be prepared by the association's counsel and must include a written agreement that acknowledges that the amount offered is secured by the lien of the association.

¹⁰ *Supra* at note 1.

The bill prohibits the association from adding additional legal fees within the 60-day period if the unit owner makes a qualifying offer. The association may add a reasonable amount to prepare the written agreement.

In effect, if a unit owner's attorney prepares and submits an offer to settle the lien dispute for the full amount, the offer would not constitute a qualifying offer under the provisions of the bill and the association could continue the foreclosure action and its collection efforts and continue to add additional legal fees.

The bill requires that the qualifying offer to the association must be delivered to the attorney of the association by hand delivery or certified or registered mail. It also provides that the qualifying offer is not deemed received by the association until the offer is actually received by the attorney.

The bill further specifies that the offer is not considered a qualifying offer if a notice of contest of lien is recorded or if the offer is made more than eight months after the lien is recorded by the association unless a foreclosure action has already been filed.

Effective date

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners in condominium and cooperative associations would be notified before a foreclosure action on a lien is initiated. These homeowners may save the cost of attorney's fees if they make a qualifying offer for the amount of the lien and pay the

amount with 60 days of the offer. They may have to pay the interest due on the amount owed and the costs of preparing the agreement for payment of the amount owed.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
