

By the Committee on Regulated Industries; and Senator Ring

580-2335-07

1 A bill to be entitled
2 An act relating to condominiums and
3 cooperatives; amending s. 718.116, F.S.;
4 prohibiting a condominium association from
5 initiating a foreclosure action for assessments
6 owed earlier than 30 days after the condominium
7 association has given the unit owner written
8 notice of the condominium association's intent
9 to foreclose its lien to collect the unpaid
10 assessments secured by the lien; providing
11 procedures for delivery of the written notice
12 to the unit owner; providing an exception;
13 providing that if a unit owner makes a
14 qualifying offer, the condominium association
15 must suspend its foreclosure action or
16 collection efforts and agree to allow the unit
17 owner to pay all amounts due plus interest
18 within 60 days after receipt of the qualifying
19 offer; defining the term "qualifying offer";
20 providing procedures for acceptance of the
21 qualifying offer; providing an exception;
22 amending s. 719.108, F.S.; providing that if a
23 unit owner makes a qualifying offer, the
24 cooperative association must suspend its
25 foreclosure action or collection efforts and
26 agree to allow the unit owner to pay all
27 amounts due plus interest within 60 days after
28 receipt of the qualifying offer; defining the
29 term "qualifying offer"; providing procedures
30 for acceptance of the qualifying offer;
31

1 providing an exception; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (6) of section 718.116, Florida
7 Statutes, is amended to read:

8 718.116 Assessments; liability; lien and priority;
9 interest; collection.--

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

18 (b) A foreclosure action may not be initiated earlier
19 than 30 days after the association has given the unit owner
20 written notice of the association's intent to foreclose its
21 lien to collect the unpaid assessments secured by the lien.
22 The written notice is a condition precedent to the filing of
23 any foreclosure action.

24 1. The written notice may be given by hand delivery to
25 the unit owner or sent by electronic transmission if the unit
26 owner has agreed to receive the association's notice by an
27 electronic format. If hand delivery is not possible or the
28 owner has not consented to receive the association's notice by
29 electronic format, written notice must be sent by registered
30 or certified mail and regular mail to the unit owner at the
31 last address given to the association by the unit owner, if

1 the address is within the United States, and to the address of
2 the property that is subject to the lien.

3 2. If the unit owner has given the association an
4 alternate address outside the United States, the written
5 notice requirement is satisfied by sending a copy of the
6 written notice to the unit owner by regular mail at the
7 alternate address and by sending a copy to the property
8 address by registered or certified mail and regular mail.

9 3. If the mailing is completed in compliance with this
10 subsection, the written notice is deemed to have been given
11 and is deemed to have been received by the unit owner 5 days
12 after the date of mailing, hand delivery, or electronic
13 transmission. Notwithstanding this subsection, the notice
14 requirements are inapplicable if a unit owner records a notice
15 of contest of lien or if an action to foreclose a mortgage on
16 the property is pending before any court. ~~No foreclosure~~
17 ~~judgment may be entered until at least 30 days after the~~
18 ~~association gives written notice to the unit owner of its~~
19 ~~intention to foreclose its lien to collect the unpaid~~
20 ~~assessments. If this notice is not given at least 30 days~~
21 ~~before the foreclosure action is filed, and if the unpaid~~
22 ~~assessments, including those coming due after the claim of~~
23 ~~lien is recorded, are paid before the entry of a final~~
24 ~~judgment of foreclosure, the association shall not recover~~
25 ~~attorney's fees or costs. The notice must be given by~~
26 ~~delivery of a copy of it to the unit owner or by certified or~~
27 ~~registered mail, return receipt requested, addressed to the~~
28 ~~unit owner at his or her last known address; and, upon such~~
29 ~~mailing, the notice shall be deemed to have been given, and~~
30 ~~the court shall proceed with the foreclosure action and may~~
31 ~~award attorney's fees and costs as permitted by law. The~~

1 ~~notice requirements of this subsection are satisfied if the~~
2 ~~unit owner records a notice of contest of lien as provided in~~
3 ~~subsection (5). The notice requirements of this subsection do~~
4 ~~not apply if an action to foreclose a mortgage on the~~
5 ~~condominium unit is pending before any court; if the rights of~~
6 ~~the association would be affected by such foreclosure; and if~~
7 ~~actual, constructive, or substitute service of process has~~
8 ~~been made on the unit owner.~~

9 (c) If the unit owner remains in possession of the
10 unit after a foreclosure judgment has been entered, the court,
11 in its discretion, may require the unit owner to pay a
12 reasonable rental for the unit. If the unit is rented or
13 leased during the pendency of the foreclosure action, the
14 association is entitled to the appointment of a receiver to
15 collect the rent. The expenses of the receiver shall be paid
16 by the party ~~that~~ which does not prevail in the foreclosure
17 action.

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

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

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

1 3. The unit owner's qualifying offer must be in
2 writing. The offer must be included in an agreement prepared
3 by the association's counsel which document must acknowledge
4 that the amounts contained therein are secured by the lien of
5 the association. If the unit owner makes a qualifying offer
6 under this paragraph, the association may not add additional
7 legal fees within the 60-day period other than a reasonable
8 amount to prepare the written agreement required by this
9 subsection.

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

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

21 719.108 Rents and assessments; liability; lien and
22 priority; interest; collection; cooperative ownership.--

23 (5)(a) Liens for rents and assessments may be
24 foreclosed by suit brought in the name of the association, in
25 like manner as a foreclosure of a mortgage on real property.
26 In any foreclosure, the unit owner shall pay a reasonable
27 rental for the cooperative parcel, if so provided in the
28 cooperative documents, and the plaintiff in the foreclosure is
29 entitled to the appointment of a receiver to collect the rent.
30 The association has the power, unless prohibited by the
31 cooperative documents, to bid on the cooperative parcel at the

1 foreclosure sale and to acquire and hold, lease, mortgage, or
2 convey it. Suit to recover a money judgment for unpaid rents
3 and assessments may be maintained without waiving the lien
4 securing them.

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

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

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

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

1 the lien is recorded by the association unless a foreclosure
2 action has already been filed.

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

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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1844

8 The committee substitute (CS) removes the requirement that
9 condominium, cooperative, and homeowner's associations must
10 notify the property owner by certified or registered mail when
11 it files a lien based on the property owner's failure to pay
12 an assessment or other fee owed to the association.

13 The CS also removes the provision that would permit property
14 owners to pay, over a period of 90 days, the attorney fees,
15 including interest at the standard interest rate, that are
16 assessed against the property owner as a result of the
17 association's efforts to collect the debt that resulted in the
18 lien.

19 The CS amends s. 718.116, F.S., to require a written notice
20 before a foreclosure action on a lien may be initiated by a
21 condominium association, to specify how the notice must be
22 given, to provide for the suspension of the foreclosure action
23 and collection efforts after a qualified offer is made by the
24 unit owner, and to specify the conditions for a qualified
25 offer, including the payment of interest and attorney's fees.

26 The CS repeals the provisions in s. 718.116, F.S., that
27 prohibit condominium associations to recover attorney's fees
28 or costs unless a written notice of the intent to foreclose is
29 given to the unit owner, that specify how the written notice
30 must be made, and that specify the circumstances in which the
31 written notice is not required.

32 The bill amends s. 719.108, F.S., to require a written notice
33 before a foreclosure action on a lien may be initiated by a
34 cooperative association, to specify how the notice must be
35 given, to provide for the suspension of the foreclosure action
36 and collection efforts after a qualified offer is made by the
37 unit owner, and to specify the conditions for a qualified
38 offer, including the payment of interest and attorney's fees.