

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

15
16 Be It Enacted by the Legislature of the State of Florida:

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

20 720.3085 Payment for assessments; lien claims.--

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

29 (2) A parcel owner is jointly and severally liable
30 with the previous parcel owner for all unpaid assessments that
31 came due up to the time of transfer of title. This liability

1 is without prejudice to any right the present parcel owner may
2 have to recover any amounts paid by the present owner from the
3 previous owner.

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

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

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

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

30 (a) Provide the owner with 45 days to make payment for
31 all amounts due, including, but not limited to, any attorney's

1 fees and actual costs associated with the preparation and
2 delivery of the written demand.

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

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

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

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

28 (6) If after service of a summons on a complaint to
29 foreclose a lien the parcel is not the subject of a mortgage
30 foreclosure or a notice of tax certificate sale, or the parcel
31 owner is not a debtor in bankruptcy proceedings, the parcel

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

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

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

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

1 not add the cost of any legal fees incurred by the association
2 within the period of the stay other than costs acquired in
3 defense of a mortgage foreclosure action concerning the
4 parcel, a bankruptcy proceeding in which the parcel owner is a
5 debtor, or in response to filings by a party other than the
6 association in the lien foreclosure action of the association.

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

13 Section 2. This act shall take effect July 1, 2007.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31