

By Senator Ring

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1 A bill to be entitled
2 An act relating to lien claims by homeowners'
3 associations; amending s. 720.3085, F.S.; providing that
4 when authorized by the governing documents, a homeowners'
5 association has a lien on each parcel to secure the
6 payment of assessments and other amounts; providing an
7 exception to first mortgages of record; providing that the
8 act does not bestow upon any lien, mortgage, or certified
9 judgment of record on July 1, 2008, a priority that the
10 lien, mortgage, or judgment did not have before that date;
11 providing for the elements of a valid claim of lien;
12 providing for the content of a recording notice; requiring
13 a parcel owner or the parcel owner's agent or attorney to
14 require the homeowners' association to enforce a recorded
15 claim of lien against his or her parcel; providing
16 procedures for notifying the homeowners' association;
17 requiring that service be made by certified mail, return
18 receipt requested; authorizing the homeowners' association
19 to bring a civil action to foreclose a lien for
20 assessments in the same manner in which a mortgage of real
21 property is foreclosed; providing that the homeowners'
22 association may also bring an action to recover a money
23 judgment for the unpaid assessments without waiving any
24 claim of lien; providing that if a parcel owner remains in
25 possession of the parcel after a foreclosure judgment has
26 been entered, the court may require the parcel owner to
27 pay a reasonable rent for the parcel; providing that the
28 homeowners' association may purchase the parcel at the
29 foreclosure sale and hold, lease, mortgage, or convey the

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30 parcel; limiting the liability of a first mortgagee or its
31 successor or assignee as a subsequent holder of the first
32 mortgage who acquires title to a parcel by foreclosure or
33 by deed in lieu of foreclosure for the unpaid assessments
34 that became due before the mortgagee's acquisition of
35 title; providing that the time limitations in the act do
36 not apply if the parcel is subject to a foreclosure action
37 or forced sale of another party; providing for a qualified
38 offer during the pendency of a foreclosure action;
39 providing procedures for offering and accepting a
40 qualifying offer; requiring that the qualifying offer be
41 in a particular format; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 720.3085, Florida Statutes, is amended
46 to read:

47 720.3085 Payment for assessments; lien claims.--

48 (1) When authorized by the governing documents, the
49 association has a lien on each parcel to secure the payment of
50 assessments and other amounts provided for by this section.
51 Except as otherwise set forth in this section, the lien is
52 effective from and shall relate back to the date on which the
53 original declaration of the community was recorded. However, as
54 to first mortgages of record, the lien is effective from and
55 after recording of a claim of lien in the public records of the
56 county in which the parcel is located. This subsection does not
57 bestow upon any lien, mortgage, or certified judgment of record
58 on July 1, 2008, including the lien for unpaid assessments

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59 created in this section, a priority that, by law, the lien,
 60 mortgage, or judgment did not have before July 1, 2008.

61 (a) To be valid, a claim of lien must state the description
 62 of the parcel, the name of the record owner, the name and address
 63 of the association, the assessment amount due, and the due date.
 64 The claim of lien shall secure all unpaid assessments that are
 65 due and that may accrue subsequent to the recording of the claim
 66 of lien and before entry of a certificate of title, as well as
 67 interest, late charges, and reasonable costs and attorney's fees
 68 incurred by the association incident to the collection process.
 69 The person making the payment is entitled to a satisfaction of
 70 the lien upon payment in full.

71 (b) By recording a notice in substantially the following
 72 form, a parcel owner or the parcel owner's agent or attorney may
 73 require the association to enforce a recorded claim of lien
 74 against his or her parcel:

75
 76 NOTICE OF CONTEST OF LIEN

77
 78 TO: (Name and address of association)

79
 80 You are notified that the undersigned contests the claim of lien
 81 filed by you on _____, (year) _____, and recorded in Official Records
 82 Book _____ at page _____, of the public records of _____ County,
 83 Florida, and that the time within which you may file suit to
 84 enforce your lien is limited to 90 days following the date of
 85 service of this notice. Executed this _____ day of _____, (year).

86
 87 Signed: (Owner or Attorney)

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88
89 After the notice of a contest of lien has been recorded, the
90 clerk of the circuit court shall mail a copy of the recorded
91 notice to the association by certified mail, return receipt
92 requested, at the address shown in the claim of lien or the most
93 recent amendment to it and shall certify to the service on the
94 face of the notice. Service is complete upon mailing. After
95 service, the association has 90 days in which to file an action
96 to enforce the lien and, if the action is not filed within the
97 90-day period, the lien is void. However, the 90-day period shall
98 be extended for any length of time that the association is
99 prevented from filing its action because of an automatic stay
100 resulting from the filing of a bankruptcy petition by the parcel
101 owner or by any other person claiming an interest in the parcel.

102 (d) The association may bring an action in its name to
103 foreclose a lien for assessments in the same manner in which a
104 mortgage of real property is foreclosed and may also bring an
105 action to recover a money judgment for the unpaid assessments
106 without waiving any claim of lien. The association is entitled to
107 recover its reasonable attorney's fees incurred in an action to
108 foreclose a lien or an action to recover a money judgment for
109 unpaid assessments.

110 (e) If the parcel owner remains in possession of the parcel
111 after a foreclosure judgment has been entered, the court may
112 require the parcel owner to pay a reasonable rent for the parcel.
113 If the parcel is rented or leased during the pendency of the
114 foreclosure action, the association is entitled to the
115 appointment of a receiver to collect the rent. The expenses of

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116 the receiver must be paid by the party who does not prevail in
117 the foreclosure action.

118 (f) The association may purchase the parcel at the
119 foreclosure sale and hold, lease, mortgage, or convey the parcel.

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

128 (b) ~~(2)~~ A parcel owner is jointly and severally liable with
129 the previous parcel owner for all unpaid assessments that came
130 due up to the time of transfer of title. This liability is
131 without prejudice to any right the present parcel owner may have
132 to recover any amounts paid by the present owner from the
133 previous owner.

134 (c) Notwithstanding anything to the contrary contained in
135 this section, the liability of a first mortgagee, or its
136 successor or assignee as a subsequent holder of the first
137 mortgage who acquires title to a parcel by foreclosure or by deed
138 in lieu of foreclosure for the unpaid assessments that became due
139 before the mortgagee's acquisition of title, shall be the lesser
140 of:

141 1. The parcel's unpaid common expenses and regular periodic
142 or special assessments that accrued or came due during the 12
143 months immediately preceding the acquisition of title and for

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144 which payment in full has not been received by the association;
145 or

146 2. One percent of the original mortgage debt.

147
148 The limitations on first mortgagee liability provided by this
149 paragraph apply only if the first mortgagee filed suit against
150 the parcel owner and initially joined the association as a
151 defendant in the mortgagee foreclosure action. Joinder of the
152 association is not required if, on the date the complaint is
153 filed, the association was dissolved or did not maintain an
154 office or agent for service of process at a location that was
155 known to or reasonably discoverable by the mortgagee.

156 (3) Assessments and installments on assessments that are
157 not paid when due bear interest from the due date until paid at
158 the rate provided in the declaration of covenants or the bylaws
159 of the association, which rate may not exceed the rate allowed by
160 law. If no rate is provided in the declaration or bylaws,
161 interest accrues at the rate of 18 percent per year.

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

166 (b) Any payment received by an association and accepted
167 shall be applied first to any interest accrued, then to any
168 administrative late fee, then to any costs and reasonable
169 attorney's fees incurred in collection, and then to the
170 delinquent assessment. This paragraph applies notwithstanding any
171 restrictive endorsement, designation, or instruction placed on or

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172 accompanying a payment. A late fee is not subject to the
173 provisions of chapter 687 and is not a fine.

174 (4) A homeowners' association may not file a record ~~claim~~
175 of lien against a parcel for unpaid assessments unless a written
176 notice or demand for past due assessments as well as any other
177 amounts owed to the association pursuant to its governing
178 documents has been made by the association. The written notice or
179 demand must:

180 (a) Provide the owner with 45 days following the date the
181 notice is deposited in the mail to make payment for all amounts
182 due, including, but not limited to, any attorney's fees and
183 actual costs associated with the preparation and delivery of the
184 written demand.

185 (b) Be sent by registered or certified mail, return receipt
186 requested, and by first-class United States mail to the parcel
187 owner at his or her last address as reflected in the records of
188 the association, if the address is within the United States, and
189 to the parcel owner subject to the demand at the address of the
190 parcel if the owner's address as reflected in the records of the
191 association is not the parcel address. If the address reflected
192 in the records is outside the United States, then sending the
193 notice to that address and to the parcel address by first-class
194 United States mail is sufficient.

195 (5) The association may bring an action in its name to
196 foreclose a lien for unpaid assessments secured by a lien in the
197 same manner that a mortgage of real property is foreclosed and
198 may also bring an action to recover a money judgment for the
199 unpaid assessments without waiving any claim of lien. The ~~Such~~
200 action to foreclose the lien may not be brought until 45 days

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201 after the parcel owner has been provided notice of the
202 association's intent to foreclose and collect the unpaid amount.
203 The notice must be given in the manner provided in paragraph
204 (4) (b) and the notice may not be provided until the passage of
205 the 45 days required in paragraph (4) (a).

206 (a) The association may recover any interest, late charges,
207 costs, and reasonable attorney's fees incurred in a lien
208 foreclosure action or in an action to recover a money judgment
209 for the unpaid assessments.

210 (b) The time limitations in this subsection do not apply if
211 the parcel is subject to a foreclosure action or forced sale of
212 another party, or if an owner of the parcel is a debtor in a
213 bankruptcy proceeding ~~The association may purchase the parcel at~~
214 ~~the foreclosure sale and hold, lease, mortgage, or convey the~~
215 ~~parcel.~~

216 (6) If after service of a summons on a complaint to
217 foreclose a lien the parcel is not the subject of a mortgage
218 foreclosure or a notice of tax certificate sale, ~~or~~ the parcel
219 owner is not a debtor in bankruptcy proceedings, or the trial of
220 or trial docket for the lien foreclosure action is not set to
221 begin within 30 days, the parcel owner may serve and file with
222 the court a qualifying offer at any time before the entry of a
223 foreclosure judgment. For purposes of this subsection, the term
224 "qualifying offer" means a written offer to pay all amounts
225 secured by the lien of the association plus amounts ~~interest~~
226 accruing during the pendency of the offer ~~at the rate of interest~~
227 ~~provided in this section.~~ The parcel owner may make only one
228 qualifying offer during the pendency of a foreclosure action. If
229 a parcel becomes the subject of a mortgage foreclosure or a

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230 notice of tax certificate sale while a qualifying offer is
231 pending, the qualifying offer becomes voidable at the election of
232 the association. If the parcel owner becomes a debtor in
233 bankruptcy proceedings while a qualifying offer is pending, the
234 qualifying offer becomes void.

235 (a) The parcel owner shall deliver a copy of the filed
236 qualifying offer to the association's attorney by hand delivery,
237 obtaining a written receipt, or by certified mail, return receipt
238 requested.

239 (b) The parcel owner's filing of the qualifying offer with
240 the court stays the foreclosure action for the period stated in
241 the qualifying offer, which may not exceed 60 days following the
242 date of service of the qualifying offer and no sooner than 30
243 days before the date of trial, arbitration, or the beginning of
244 the trial docket, whichever occurs first, to permit the parcel
245 owner to pay the qualifying offer to the association plus any
246 amounts ~~interest~~ accruing during the pendency of the offer.

247 (c) The qualifying offer ~~of the parcel owner~~ must be in
248 writing, be signed by all owners ~~the owner~~ of the parcel and the
249 spouse of any ~~the~~ owner if the spouse resides in or otherwise
250 claims ~~holds~~ a homestead interest in the parcel, be acknowledged
251 by a notary public, and be in substantially the following form:
252 ~~state the total amount due the association, state that the total~~
253 ~~amount due the association is secured by the lien of the~~
254 ~~association, state that the association is entitled to foreclose~~
255 ~~the lien and obtain a foreclosure judgment for the total amount~~
256 ~~due if the parcel owner breaches the qualifying offer, state that~~
257 ~~the parcel owner will not endanger the priority of the lien of~~
258 ~~the association or the amounts secured by the lien, and state the~~

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259 ~~actual date or dates the association will receive the total~~
260 ~~amount due from the parcel owner.~~

261

262 QUALIFYING OFFER263 AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085

264

265 I/We, [Name(s) of Parcel Owner(s)], admit the following:

266 1. The total amount due the association is secured by the
267 lien of the association.

268 2. The association is entitled to foreclose its claim of
269 lien and obtain a foreclosure judgment for the total amount due
270 if I/we breach this qualifying offer by failing to pay the amount
271 due by the date specified in this qualifying offer.

272 3. I/We will not permit the priority of the lien of the
273 association or the amounts secured by the lien to be endangered.

274 4. I/We hereby affirm that the date(s) by which the
275 association will receive \$ [specify amount] as the total amount
276 due is [specify date, no later than 60 days after the date of
277 service of the qualifying offer and at least 30 days before the
278 trial or arbitration date], in the following amounts and dates:

279 5. I/We hereby confirm that I/we have requested and have
280 received from the homeowners' association a breakdown and total
281 of all sums due the association and that the amount offered above
282 is equal to or greater than the total amount provided by the
283 association.

284 6. This qualifying offer operates as a stay to all portions
285 of the foreclosure action which seek to collect unpaid
286 assessments as provided in s. 720.3085.

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288 Signed: (Signatures of all parcel owners and spouses, if any)

289

290 Sworn to and subscribed this (date) day of (month), (year),
291 before the undersigned authority.

292

293 Notary Public: (Signature of notary public)

294

295 If the parcel owner makes a qualifying offer under this
296 subsection, the association may not add the cost of any legal
297 fees incurred by the association within the period of the stay
298 other than costs acquired in defense of a mortgage foreclosure
299 action concerning the parcel, a bankruptcy proceeding in which
300 the parcel owner is a debtor, or in response to filings by a
301 party other than the association in the lien foreclosure action
302 of the association.

303 (7) ~~(d)~~ If the parcel owner breaches the qualifying offer,
304 the stay shall be vacated and the association may proceed in its
305 action to obtain a foreclosure judgment against the parcel and
306 the parcel owners for the amount in the qualifying offer and any
307 amounts accruing after the date of the qualifying offer.

308 Section 2. This act shall take effect July 1, 2008.