

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  
8           construction with respect to lien priority; providing for  
9           the elements of a valid claim of lien; providing for the  
10          content of a recording notice; requiring a parcel owner or  
11          the parcel owner's agent or attorney to require the  
12          homeowners' association to enforce a recorded claim of  
13          lien against his or her parcel; providing procedures for  
14          notifying the homeowners' association; requiring that  
15          service be made by certified mail, return receipt  
16          requested; authorizing the homeowners' association to  
17          bring a civil action to foreclose a lien for assessments  
18          in the same manner in which a mortgage of real property is  
19          foreclosed; providing that the homeowners' association may  
20          also bring an action to recover a money judgment for the  
21          unpaid assessments without waiving any claim of lien;  
22          providing that if a parcel owner remains in possession of  
23          the parcel after a foreclosure judgment has been entered,  
24          the court may require the parcel owner to pay a reasonable  
25          rent for the parcel; providing that the homeowners'  
26          association may purchase the parcel at the foreclosure  
27          sale and hold, lease, mortgage, or convey the parcel;  
28          limiting the liability of a first mortgagee or its

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

40 |

41 | Be It Enacted by the Legislature of the State of Florida:

42 |

43 | Section 1. Section 720.3085, Florida Statutes, is amended  
 44 | to read:

45 | 720.3085 Payment for assessments; lien claims.--

46 | (1) When authorized by the governing documents, the  
 47 | association has a lien on each parcel to secure the payment of  
 48 | assessments and other amounts provided for by this section.  
 49 | Except as otherwise set forth in this section, the lien is  
 50 | effective from and shall relate back to the date on which the  
 51 | original declaration of the community was recorded. However, as  
 52 | to first mortgages of record, the lien is effective from and  
 53 | after recording of a claim of lien in the public records of the  
 54 | county in which the parcel is located. Nothing in this  
 55 | subsection shall be construed to bestow upon any lien, mortgage,  
 56 | or certified judgment of record on July 1, 2008, including liens

57 for unpaid assessments created pursuant to this subsection, a  
 58 priority which, by law, the lien, mortgage, or judgment did not  
 59 have before that date.

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

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

74  
 75 NOTICE OF CONTEST OF LIEN

76  
 77 TO: (Name and address of association)

78  
 79 You are notified that the undersigned contests the claim of lien  
 80 filed by you on \_\_\_\_\_, (year) \_\_\_\_\_, and recorded in Official Records  
 81 Book \_\_\_\_\_ at page \_\_\_\_\_, of the public records of \_\_\_\_\_ County,  
 82 Florida, and that the time within which you may file suit to  
 83 enforce your lien is limited to 90 days following the date of

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84 service of this notice. Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
85 (year).

86  
87 Signed: (Owner or Attorney)

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  
98 shall 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 (c) 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  
107 to recover its reasonable attorney's fees incurred in an action  
108 to foreclose a lien or an action to recover a money judgment for  
109 unpaid assessments.

110 (d) If the parcel owner remains in possession of the  
111 parcel after a foreclosure judgment has been entered, the court

112 may require the parcel owner to pay a reasonable rent for the  
 113 parcel. If the parcel is rented or leased during the pendency of  
 114 the foreclosure action, the association is entitled to the  
 115 appointment of a receiver to collect the rent. The expenses of  
 116 the receiver must be paid by the party who does not prevail in  
 117 the foreclosure action.

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

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

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

135 (c) Notwithstanding anything to the contrary contained in  
 136 this section, the liability of a first mortgagee, or its  
 137 successor or assignee as a subsequent holder of the first  
 138 mortgage who acquires title to a parcel by foreclosure or by  
 139 deed in lieu of foreclosure for the unpaid assessments that

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140 became due before the mortgagee's acquisition of title, shall be  
141 the lesser of:

142 1. The parcel's unpaid common expenses and regular  
143 periodic or special assessments that accrued or came due during  
144 the 6 months immediately preceding the acquisition of title and  
145 for which payment in full has not been received by the  
146 association; or

147 2. One percent of the original mortgage debt.

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

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

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

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167 (b) Any payment received by an association and accepted  
168 shall be applied first to any interest accrued, then to any  
169 administrative late fee, then to any costs and reasonable  
170 attorney's fees incurred in collection, and then to the  
171 delinquent assessment. This paragraph applies notwithstanding  
172 any restrictive endorsement, designation, or instruction placed  
173 on or accompanying a payment. A late fee is not subject to the  
174 provisions of chapter 687 and is not a fine.

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

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

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

194 then sending the notice to that address and to the parcel  
 195 address by first-class United States mail is sufficient.

196 (5) The association may bring an action in its name to  
 197 foreclose a lien for unpaid assessments secured by a lien in the  
 198 same manner that a mortgage of real property is foreclosed and  
 199 may also bring an action to recover a money judgment for the  
 200 unpaid assessments without waiving any claim of lien. The ~~Such~~  
 201 action to foreclose the lien may not be brought until 45 days  
 202 after the parcel owner has been provided notice of the  
 203 association's intent to foreclose and collect the unpaid amount.  
 204 The notice must be given in the manner provided in paragraph  
 205 (4) (b) and the notice may not be provided until the passage of  
 206 the 45 days required in paragraph (4) (a).

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

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

217 (6) If after service of a summons on a complaint to  
 218 foreclose a lien the parcel is not the subject of a mortgage  
 219 foreclosure or a notice of tax certificate sale, ~~or~~ the parcel  
 220 owner is not a debtor in bankruptcy proceedings, or the trial of  
 221 or trial docket for the lien foreclosure action is not set to



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222 begin within 30 days, the parcel owner may serve and file with  
223 the court a qualifying offer at any time before the entry of a  
224 foreclosure judgment. For purposes of this subsection, the term  
225 "qualifying offer" means a written offer to pay all amounts  
226 secured by the lien of the association plus amounts ~~interest~~  
227 accruing during the pendency of the offer ~~at the rate of~~  
228 ~~interest provided in this section.~~ The parcel owner may make  
229 only one qualifying offer during the pendency of a foreclosure  
230 action. If a parcel becomes the subject of a mortgage  
231 foreclosure or a notice of tax certificate sale while a  
232 qualifying offer is pending, the qualifying offer becomes  
233 voidable at the election of the association. If the parcel owner  
234 becomes a debtor in bankruptcy proceedings while a qualifying  
235 offer is pending, the qualifying offer becomes void.

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

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

248 (c) The qualifying offer ~~of the parcel owner~~ must be in  
249 writing, be signed by all owners ~~the owner~~ of the parcel and the

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250 spouse of any ~~the~~ owner if the spouse resides in or otherwise  
 251 claims ~~holds~~ a homestead interest in the parcel, be acknowledged  
 252 by a notary public, and be in substantially in the following  
 253 form: state the total amount due the association, state that the  
 254 total amount due the association is secured by the lien of the  
 255 association, state that the association is entitled to foreclose  
 256 the lien and obtain a foreclosure judgment for the total amount  
 257 due if the parcel owner breaches the qualifying offer, state  
 258 that the parcel owner will not endanger the priority of the lien  
 259 of the association or the amounts secured by the lien, and state  
 260 the actual date or dates the association will receive the total  
 261 amount due from the parcel owner.

262

263 QUALIFYING OFFER

264 AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085

265

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

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

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

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

275 4. I/We hereby affirm that the date(s) by which the  
 276 association will receive \$ [specify amount] as the total amount  
 277 due is [specify date, no later than 60 days after the date of

278 service of the qualifying offer and at least 30 days before the  
 279 trial or arbitration date], in the following amounts and dates:

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

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

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

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

294 Notary Public: (Signature of notary public)

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

304 (7) ~~(d)~~ If the parcel owner breaches the qualifying offer,  
 305 the stay shall be vacated and the association may proceed in its

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306 | action to obtain a foreclosure judgment against the parcel and  
307 | the parcel owners for the amount in the qualifying offer and any  
308 | amounts accruing after the date of the qualifying offer.

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