

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
 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
 38 qualifying offer during the pendency of a foreclosure
 39 action; 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
 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
 62 description of the parcel, the name of the record owner, the
 63 name and address of the association, the assessment amount due,
 64 and the due date. The claim of lien shall secure all unpaid
 65 assessments that are due and that may accrue subsequent to the
 66 recording of the claim of lien and before entry of a certificate
 67 of title, as well as interest, late charges, and reasonable
 68 costs and attorney's fees incurred by the association incident
 69 to the collection process. The person making the payment is
 70 entitled to a satisfaction of 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 _____,
 86 (year).

87
 88 Signed: (Owner or Attorney)

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

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

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

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

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

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

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

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

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

143 1. The parcel's unpaid common expenses and regular
 144 periodic or special assessments that accrued or came due during
 145 the 12 months immediately preceding the acquisition of title and
 146 for which payment in full has not been received by the
 147 association; or

148 2. One percent of the original mortgage debt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

263
 264 QUALIFYING OFFER

265 AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085

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

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

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

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

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

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

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

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

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

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

294
 295 Notary Public: (Signature of notary public)

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

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

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

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