



734006

LEGISLATIVE ACTION

Senate

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House

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04/28/2014 04:09 PM

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Senator Lee moved the following:

Senate Amendment (with title amendment)

Delete lines 71 - 684

and insert:

468.4334 Professional practice standards; liability.-

(1) A community association manager and a community association management firm are deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on



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12 behalf of the association as authorized by this chapter loyally,
13 skillfully, and diligently; dealing honestly and fairly; in good
14 faith; with care and full disclosure to the community
15 association; accounting for all funds; and not charging
16 unreasonable or excessive fees.

17 (2) (a) A contract between a community association and a
18 community association manager or a contract between a community
19 association and a community association management firm may
20 provide that the community association indemnifies and holds
21 harmless the community association manager and the community
22 association management firm for ordinary negligence resulting
23 from the manager or management firm's act or omission that is
24 the result of an instruction or direction of the community
25 association. This paragraph does not preclude any other
26 negotiated indemnity or hold-harmless provision.

27 (b) Indemnification under paragraph (a) may not cover any
28 act or omission that violates criminal law; derives an improper
29 personal benefit, either directly or indirectly; is grossly
30 negligent; or is reckless, is in bad faith, is with malicious
31 purpose, or is in a manner exhibiting wanton and willful
32 disregard of human rights, safety, or property.

33 Section 3. Paragraph (d) is added to subsection (5) of
34 section 718.116, Florida Statutes, and paragraphs (a) and (b) of
35 subsection (6) of that section are amended, to read:

36 718.116 Assessments; liability; lien and priority;
37 interest; collection.-

38 (5)

39 (d) A release of lien must be in substantially the
40 following form:



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70 ...(Signature of Notary Public)...
71 ...(Print, type, or stamp commissioned name of Notary Public)...
72 Personally Known.... OR Produced.... as identification.

73
74 After notice of contest of lien has been recorded, the clerk of
75 the circuit court shall mail a copy of the recorded notice to
76 the association by certified mail, return receipt requested, at
77 the address shown in the claim of lien or most recent amendment
78 to it and shall certify to the service on the face of the
79 notice. Service is complete upon mailing. After service, the
80 association has 90 days in which to file an action to enforce
81 the lien; and, if the action is not filed within the 90-day
82 period, the lien is void. However, the 90-day period shall be
83 extended for any length of time during which the association is
84 prevented from filing its action because of an automatic stay
85 resulting from the filing of a bankruptcy petition by the unit
86 owner or by any other person claiming an interest in the parcel.

87 (6) (a) The association may bring an action in its name to
88 foreclose a lien for assessments in the manner a mortgage of
89 real property is foreclosed and may also bring an action to
90 recover a money judgment for the unpaid assessments without
91 waiving any claim of lien. The association is entitled to
92 recover its reasonable attorney ~~attorney's~~ fees incurred in
93 either a lien foreclosure action or an action to recover a money
94 judgment for unpaid assessments.

95 (b) No foreclosure judgment may be entered until at least
96 30 days after the association gives written notice to the unit
97 owner of its intention to foreclose its lien to collect the
98 unpaid assessments. The notice must be in substantially the



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99 following form:

100
101 DELINQUENT ASSESSMENT

102 This letter is to inform you a Claim of Lien has been
103 filed against your property because you have not paid
104 the ...(type of assessment)... assessment to ...(name
105 of association).... The association intends to
106 foreclose the lien and collect the unpaid amount
107 within 30 days of this letter being provided to you.

108
109 You owe the interest accruing from ...(month/year)...
110 to the present. As of the date of this letter, the
111 total amount due with interest is \$..... All costs of
112 any action and interest from this day forward will
113 also be charged to your account.

114
115 Any questions concerning this matter should be
116 directed to ...(insert name, addresses, and telephone
117 numbers of association representative)....

118
119 If this notice is not given at least 30 days before the
120 foreclosure action is filed, and if the unpaid assessments,
121 including those coming due after the claim of lien is recorded,
122 are paid before the entry of a final judgment of foreclosure,
123 the association shall not recover attorney ~~attorney's~~ fees or
124 costs. The notice must be given by delivery of a copy of it to
125 the unit owner or by certified or registered mail, return
126 receipt requested, addressed to the unit owner at his or her
127 last known address; and, upon such mailing, the notice shall be



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128 deemed to have been given, and the court shall proceed with the
129 foreclosure action and may award attorney ~~attorney's~~ fees and
130 costs as permitted by law. The notice requirements of this
131 subsection are satisfied if the unit owner records a notice of
132 contest of lien as provided in subsection (5). The notice
133 requirements of this subsection do not apply if an action to
134 foreclose a mortgage on the condominium unit is pending before
135 any court; if the rights of the association would be affected by
136 such foreclosure; and if actual, constructive, or substitute
137 service of process has been made on the unit owner.

138 Section 4. Subsection (4) of section 718.121, Florida
139 Statutes, is amended to read:

140 718.121 Liens.—

141 (4) Except as otherwise provided in this chapter, no lien
142 may be filed by the association against a condominium unit until
143 30 days after the date on which a notice of intent to file a
144 lien has been delivered to the owner by registered or certified
145 mail, return receipt requested, and by first-class United States
146 mail to the owner at his or her last address as reflected in the
147 records of the association, if the address is within the United
148 States, and delivered to the owner at the address of the unit if
149 the owner's address as reflected in the records of the
150 association is not the unit address. If the address reflected in
151 the records is outside the United States, sending the notice to
152 that address and to the unit address by first-class United
153 States mail is sufficient. Delivery of the notice shall be
154 deemed given upon mailing as required by this subsection. The
155 notice must be in substantially the following form:

156



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NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit of ...(name of association)...

The following amounts are currently due on your
account to ...(name of association)... and must be
paid within 30 days after your receipt of this letter.

This letter shall serve as the association's notice of
intent to record a Claim of Lien against your property
no sooner than 30 days after your receipt of this
letter, unless you pay in full the amounts set forth
below:

<u>Maintenance due ...(dates)...</u>	<u>\$....</u>
<u>Late fee, if applicable</u>	<u>\$....</u>
<u>Interest through ...(dates)...*</u>	<u>\$....</u>
<u>Certified mail charges</u>	<u>\$....</u>
<u>Other costs</u>	<u>\$....</u>
<u>TOTAL OUTSTANDING</u>	<u>\$....</u>

*Interest accrues at the rate of percent per
annum.

Section 5. Subsections (3) and (4) of section 719.108,
Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and
priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not
paid when due bear interest at the rate provided in the
cooperative documents from the date due until paid. This rate



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186 may not exceed the rate allowed by law and, if a rate is not
187 provided in the cooperative documents, accrues at 18 percent per
188 annum. If the cooperative documents or bylaws so provide, the
189 association may charge an administrative late fee in addition to
190 such interest, not to exceed the greater of \$25 or 5 percent of
191 each installment of the assessment for each delinquent
192 installment that the payment is late. Any payment received by an
193 association must be applied first to any interest accrued by the
194 association, then to any administrative late fee, then to any
195 costs and reasonable attorney ~~attorney's~~ fees incurred in
196 collection, and then to the delinquent assessment. The foregoing
197 applies notwithstanding any restrictive endorsement,
198 designation, or instruction placed on or accompanying a payment.
199 A late fee is not subject to chapter 687 or s. 719.303(4).

200 (4) The association has a lien on each cooperative parcel
201 for any unpaid rents and assessments, plus interest, and any
202 authorized administrative late fees. If authorized by the
203 cooperative documents, the lien also secures reasonable attorney
204 ~~attorney's~~ fees incurred by the association incident to the
205 collection of the rents and assessments or enforcement of such
206 lien. The lien is effective from and after recording a claim of
207 lien in the public records in the county in which the
208 cooperative parcel is located which states the description of
209 the cooperative parcel, the name of the unit owner, the amount
210 due, and the due dates. ~~The lien expires if a claim of lien is~~
211 ~~not filed within 1 year after the date the assessment was due,~~
212 ~~and the lien does not continue for longer than 1 year after the~~
213 ~~claim of lien has been recorded unless, within that time, an~~
214 ~~action to enforce the lien is commenced.~~ Except as otherwise



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215 provided in this chapter, a lien may not be filed by the
216 association against a cooperative parcel until 30 days after the
217 date on which a notice of intent to file a lien has been
218 delivered to the owner.

219 (a) The notice must be sent to the unit owner at the
220 address of the unit by first-class United States mail and, the
221 notice must be in substantially the following form:

222
223 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

224
225 RE: Unit ...(unit number)... of ...(name of
226 cooperative)...

227
228 The following amounts are currently due on your
229 account to ...(name of association)... and must be
230 paid within 30 days after your receipt of this letter.
231 This letter shall serve as the association's notice of
232 intent to record a Claim of Lien against your property
233 no sooner than 30 days after your receipt of this
234 letter, unless you pay in full the amounts set forth
235 below:

236
237 Maintenance due ...(dates)... \$....
238 Late fee, if applicable \$....
239 Interest through ...(dates)...* \$....
240 Certified mail charges \$....
241 Other costs \$....
242 TOTAL OUTSTANDING \$....
243



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244 *Interest accrues at the rate of percent per
245 annum.

246 1. If the most recent address of the unit owner on the
247 records of the association is the address of the unit, the
248 notice must be sent by ~~registered~~ or certified mail, return
249 receipt requested, to the unit owner at the address of the unit.

250 2. If the most recent address of the unit owner on the
251 records of the association is in the United States, but is not
252 the address of the unit, the notice must be sent by ~~registered~~
253 ~~or~~ certified mail, return receipt requested, to the unit owner
254 at his or her most recent address.

255 3. If the most recent address of the unit owner on the
256 records of the association is not in the United States, the
257 notice must be sent by first-class United States mail to the
258 unit owner at his or her most recent address.

259 (b) A notice that is sent pursuant to this subsection is
260 deemed delivered upon mailing. A claim of lien must be executed
261 and acknowledged by an officer or authorized agent of the
262 association. The lien is not effective 1 year after the claim of
263 lien was recorded unless, within that time, an action to enforce
264 the lien is commenced. The 1-year period is automatically
265 extended for any length of time during which the association is
266 prevented from filing a foreclosure action by an automatic stay
267 resulting from a bankruptcy petition filed by the parcel owner
268 or any other person claiming an interest in the parcel. The
269 claim of lien secures all unpaid rents and assessments that are
270 due and that may accrue after the claim of lien is recorded and
271 through the entry of a final judgment, as well as interest and
272 all reasonable costs and attorney fees incurred by the



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273 association incident to the collection process. Upon payment in
274 full, the person making the payment is entitled to a
275 satisfaction of the lien.

276 (c) By recording a notice in substantially the following
277 form, a unit owner or the unit owner's agent or attorney may
278 require the association to enforce a recorded claim of lien
279 against his or her cooperative parcel:

280
281 NOTICE OF CONTEST OF LIEN

282
283 TO: ...(Name and address of association)...

284
285 You are notified that the undersigned contests the
286 claim of lien filed by you on, ...(year)..., and
287 recorded in Official Records Book at Page,
288 of the public records of County, Florida, and
289 that the time within which you may file suit to
290 enforce your lien is limited to 90 days from the date
291 of service of this notice. Executed this day of
292, ...(year)....

293 Signed: ...(Owner or Attorney)...

294
295 After notice of contest of lien has been recorded, the clerk of
296 the circuit court shall mail a copy of the recorded notice to
297 the association by certified mail, return receipt requested, at
298 the address shown in the claim of lien or most recent amendment
299 to it and shall certify to the service on the face of the
300 notice. Service is complete upon mailing. After service, the
301 association has 90 days in which to file an action to enforce



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302 the lien. If the action is not filed within the 90-day period,
303 the lien is void. However, the 90-day period shall be extended
304 for any length of time during which the association is prevented
305 from filing its action because of an automatic stay resulting
306 from the filing of a bankruptcy petition by the unit owner or by
307 any other person claiming an interest in the parcel.

308 (d) A release of lien must be in substantially the
309 following form:

311 RELEASE OF LIEN

312 The undersigned lienor, in consideration of the final payment in
313 the amount of \$...., hereby waives and releases its lien and
314 right to claim a lien for unpaid assessments through,
315 ...(year)..., recorded in Official Records Book at Page
316, of the public records of County, Florida, for the
317 following described real property:

318
319 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO.
320 OF ... (NAME OF COOPERATIVE)..., A COOPERATIVE AS SET
321 FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS
322 ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED
323 IN OFFICIAL RECORDS BOOK, PAGE, OF THE
324 PUBLIC RECORDS OF COUNTY, FLORIDA.

325
326 ...(Signature of Authorized Agent)... ...(Signature of
327 Witness)...

328 ...(Print Name)... ...(Print Name)...

329
330 ...(Signature of Witness)...



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331 ...(Print Name)...

332
333 Sworn to (or affirmed) and subscribed before me this day of
334, ...(year)..., by ...(name of person making statement)....
335 ...(Signature of Notary Public)...

336 ...(Print, type, or stamp commissioned name of Notary Public)...

337 Personally Known.... OR Produced.... as identification.

338 Section 6. Present paragraphs (d) and (e) of subsection (1)
339 of section 720.3085, Florida Statutes, are redesignated as
340 paragraphs (e) and (f), respectively, paragraph (a) of
341 subsection (1), paragraph (b) of subsection (3), and subsections
342 (4) and (5) are amended, and a new paragraph (d) is added to
343 subsection (1) of that section, to read:

344 720.3085 Payment for assessments; lien claims.-

345 (1) When authorized by the governing documents, the
346 association has a lien on each parcel to secure the payment of
347 assessments and other amounts provided for by this section.
348 Except as otherwise set forth in this section, the lien is
349 effective from and shall relate back to the date on which the
350 original declaration of the community was recorded. However, as
351 to first mortgages of record, the lien is effective from and
352 after recording of a claim of lien in the public records of the
353 county in which the parcel is located. This subsection does not
354 bestow upon any lien, mortgage, or certified judgment of record
355 on July 1, 2008, including the lien for unpaid assessments
356 created in this section, a priority that, by law, the lien,
357 mortgage, or judgment did not have before July 1, 2008.

358 (a) To be valid, a claim of lien must state the description
359 of the parcel, the name of the record owner, the name and



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360 address of the association, the assessment amount due, and the
361 due date. The claim of lien secures all unpaid assessments that
362 are due and that may accrue subsequent to the recording of the
363 claim of lien and before entry of a certificate of title, as
364 well as interest, late charges, and reasonable costs and
365 attorney ~~attorney's~~ fees incurred by the association incident to
366 the collection process. The person making payment is entitled to
367 a satisfaction of the lien upon payment in full.

368 (d) A release of lien must be in substantially the
369 following form:

370
371 RELEASE OF LIEN

372 The undersigned lienor, in consideration of the final payment in
373 the amount of \$...., hereby waives and releases its lien and
374 right to claim a lien for unpaid assessments through,
375 ...(year)..., recorded in Official Records Book at Page
376, of the public records of County, Florida, for the
377 following described real property:

378
379 (PARCEL NO. OR LOT AND BLOCK) OF ...(subdivision
380 name)... SUBDIVISION AS SHOWN IN THE PLAT THEREOF,
381 RECORDED AT PLAT BOOK, PAGE, OF THE OFFICIAL
382 RECORDS OF COUNTY, FLORIDA.

383
384 (or insert appropriate metes and bounds description
385 here)

386
387 ...(Signature of Authorized Agent)... ...(Signature of
388 Witness)...



389 ...(Print Name)... ...(Print Name)...

390
391 ...(Signature of Witness)...

392 ...(Print Name)...

393

394 Sworn to (or affirmed) and subscribed before me this day of

395, ...(year)..., by ...(name of person making statement)....

396 ...(Signature of Notary Public)...

397 ...(Print, type, or stamp commissioned name of Notary Public)...

398 Personally Known.... OR Produced.... as identification.

399 (3) Assessments and installments on assessments that are
400 not paid when due bear interest from the due date until paid at
401 the rate provided in the declaration of covenants or the bylaws
402 of the association, which rate may not exceed the rate allowed
403 by law. If no rate is provided in the declaration or bylaws,
404 interest accrues at the rate of 18 percent per year.

405 (b) Any payment received by an association and accepted
406 shall be applied first to any interest accrued, then to any
407 administrative late fee, then to any costs and reasonable
408 attorney ~~attorney's~~ fees incurred in collection, and then to the
409 delinquent assessment. This paragraph applies notwithstanding
410 any restrictive endorsement, designation, or instruction placed
411 on or accompanying a payment. A late fee is not subject to the
412 provisions of chapter 687 and is not a fine.

413 (4) A homeowners' association may not file a record of lien
414 against a parcel for unpaid assessments unless a written notice
415 or demand for past due assessments as well as any other amounts
416 owed to the association pursuant to its governing documents has
417 been made by the association. The written notice or demand must:



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418 (a) Provide the owner with 45 days following the date the
419 notice is deposited in the mail to make payment for all amounts
420 due, including, but not limited to, any attorney's fees and
421 actual costs associated with the preparation and delivery of the
422 written demand. The notice must be in substantially the
423 following form:

424
425 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

426
427 Re: Parcel or (lot/block) of ...(name of association)...

428
429 The following amounts are currently due on your account to
430 Association, and must be paid within forty-five (45) days after
431 your receipt of this letter. This letter shall serve as the
432 Association's notice of intent to record a Claim of Lien against
433 your property after forty-five (45) days from your receipt of
434 this letter, unless you pay in full the amounts set forth below:

435

436 <u>Maintenance due ...(dates)...</u>	<u>\$....</u>
437 <u>Late fee, if applicable</u>	<u>\$....</u>
438 <u>Interest through ...(dates)....*</u>	<u>\$....</u>
439 <u>Certified mail charges</u>	<u>\$....</u>
440 <u>Other costs</u>	<u>\$....</u>
441	
442 <u>TOTAL OUTSTANDING</u>	<u>\$....</u>

443
444 *Interest accrues at the rate of percent per annum.

445
446 ===== T I T L E A M E N D M E N T =====



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447 And the title is amended as follows:

448 Delete lines 5 - 26

449 and insert:

450 providing powers and duties of community association
451 managers and community association management firms;
452 authorizing the indemnification of a community
453 association manager or community association
454 management firm under certain conditions; amending s.
455 718.116, F.S.; requiring a release of lien to be in a
456 specific form; requiring a pre-foreclosure notice to
457 be in a specific form; amending s. 718.121, F.S.;
458 requiring a pre-lien notice to be in a specific form;
459 amending s. 719.108, F.S.; deleting a provision that
460 provides for the expiration of certain liens; revising
461 notice requirements; requiring a pre-lien notice to be
462 in a specific form; providing for execution and effect
463 of lien; providing for the content of a recording
464 notice; requiring a release of lien to be in a
465 specific form; amending s. 720.3085, F.S.; requiring a
466 release of lien to be in a specific form; requiring a