

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Spano offered the following:

2  
3 **Substitute Amendment for Amendment (831299)**

4 Remove lines 115-592 and insert:

5 in connection with collecting a delinquent assessment. Such  
6 charges must be based on the actual time expended performing  
7 necessary services that are not duplicative. Fees for collection  
8 are not recoverable after referral of the matter to an  
9 association's legal counsel. Any payment received by an  
10 association must be applied first to any interest accrued by the  
11 association, then to any administrative late fee, then to any  
12 costs and reasonable attorney ~~attorney's~~ fees incurred in  
13 collection, then to any reasonable costs for collection services  
14 contracted by the association, and then to the delinquent

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15 assessment. The foregoing is applicable notwithstanding any  
16 restrictive endorsement, designation, or instruction placed on  
17 or accompanying a payment. A late fee is not subject to chapter  
18 687 or s. 718.303(4).

19 (5) (a) The association has a lien on each condominium  
20 parcel to secure the payment of assessments. Except as otherwise  
21 provided in subsection (1) and as set forth below, the lien is  
22 effective from and shall relate back to the recording of the  
23 original declaration of condominium, or, in the case of lien on  
24 a parcel located in a phase condominium, the last to occur of  
25 the recording of the original declaration or amendment thereto  
26 creating the parcel. However, as to first mortgages of record,  
27 the lien is effective from and after recording of a claim of  
28 lien in the public records of the county in which the  
29 condominium parcel is located. Nothing in this subsection shall  
30 be construed to bestow upon any lien, mortgage, or certified  
31 judgment of record on April 1, 1992, including the lien for  
32 unpaid assessments created herein, a priority which, by law, the  
33 lien, mortgage, or judgment did not have before that date.

34 (b) To be valid, a claim of lien must state the description  
35 of the condominium parcel, the name of the record owner, the  
36 name and address of the association, the amount due, and the due  
37 dates. It must be executed and acknowledged by an officer or  
38 authorized agent of the association. The lien is not effective 1  
39 year after the claim of lien was recorded unless, within that  
40 time, an action to enforce the lien is commenced. The 1-year

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41 period is automatically extended for any length of time during  
42 which the association is prevented from filing a foreclosure  
43 action by an automatic stay resulting from a bankruptcy petition  
44 filed by the parcel owner or any other person claiming an  
45 interest in the parcel. The claim of lien secures all unpaid  
46 assessments that are due and that may accrue after the claim of  
47 lien is recorded and through the entry of a final judgment, as  
48 well as interest, authorized administrative late fees, and all  
49 reasonable costs and attorney ~~attorney's~~ fees incurred by the  
50 association incident to the collection process, including, but  
51 not limited to, any reasonable costs for collection services  
52 contracted by the association. Upon payment in full, the person  
53 making the payment is entitled to a satisfaction of the lien.

54 (c) By recording a notice in substantially the following  
55 form, a unit owner or the unit owner's agent or attorney may  
56 require the association to enforce a recorded claim of lien  
57 against his or her condominium parcel:

58 NOTICE OF CONTEST OF LIEN

59 TO: ...(Name and address of association)... You are  
60 notified that the undersigned contests the claim of lien filed  
61 by you on ....., ...(year)..., and recorded in Official Records  
62 Book .... at Page ....., of the public records of .... County,  
63 Florida, and that the time within which you may file suit to  
64 enforce your lien is limited to 90 days from the date of service  
65 of this notice. Executed this .... day of ....., ...(year)....

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

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67  
68 After notice of contest of lien has been recorded, the clerk of  
69 the circuit court shall mail a copy of the recorded notice to  
70 the association by certified mail, return receipt requested, at  
71 the address shown in the claim of lien or most recent amendment  
72 to it and shall certify to the service on the face of the  
73 notice. Service is complete upon mailing. After service, the  
74 association has 90 days in which to file an action to enforce  
75 the lien; and, if the action is not filed within the 90-day  
76 period, the lien is void. However, the 90-day period shall be  
77 extended for any length of time during which the association is  
78 prevented from filing its action because of an automatic stay  
79 resulting from the filing of a bankruptcy petition by the unit  
80 owner or by any other person claiming an interest in the parcel.

81 (d) A release of lien must be in substantially the  
82 following form:

83  
84 RELEASE OF LIEN  
85 The undersigned lienor, in consideration of the final payment in  
86 the amount of \$...., hereby waives and releases its lien and  
87 right to claim a lien for unpaid assessments through .....,  
88 ...(year)..., recorded in the Official Records Book .... at Page  
89 ...., of the public records of .... County, Florida, for the  
90 following described real property:

91  
92 UNIT NO. .... OF ...(NAME OF CONDOMINIUM)..., A

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CONDOMINIUM AS SET FORTH IN THE DECLARATION OF  
CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND  
FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS  
BOOK . . . . , PAGE . . . . , OF THE PUBLIC RECORDS OF . . . .  
COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT  
IS NOT LIMITED TO, ALL APPURTENANCES TO THE  
CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE  
UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID  
CONDOMINIUM.

..(Signature of Authorized Agent)..      ..(Signature of Witness)..  
..(Print Name)..      ..(Print Name)..  
  
..(Signature of Witness)..  
..(Print Name)..

Sworn to (or affirmed) and subscribed before me this . . . . day of  
. . . . , . . . (year) . . . . , by . . . (name of person making statement) . . . .

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

(6) (a) The association may bring an action in its name to  
foreclose a lien for assessments in the manner a mortgage of  
real property is foreclosed and may also bring an action to  
recover a money judgment for the unpaid assessments without  
waiving any claim of lien. The association is entitled to

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119 recover its reasonable attorney's fees incurred in either a lien  
120 foreclosure action or an action to recover a money judgment for  
121 unpaid assessments.

122 (b) No foreclosure judgment may be entered until at least  
123 30 days after the association gives written notice to the unit  
124 owner of its intention to foreclose its lien to collect the  
125 unpaid assessments. The notice must be in substantially the  
126 following form:

127  
128 DELINQUENT ASSESSMENT

129 This letter is to inform you a Claim of Lien has been  
130 filed against your property because you have not paid  
131 the ...(type of assessment)... assessment to ...(name  
132 of association).... The association intends to  
133 foreclose the lien and collect the unpaid amount  
134 within 30 days of this letter being provided to you.

135  
136 You owe the interest accruing from ...(month/year)...  
137 to the present. As of the date of this letter, the  
138 total amount due with interest is \$..... All costs of  
139 any action and interest from this day forward will  
140 also be charged to your account.

141  
142 Any questions concerning this matter should be  
143 directed to ...(insert name, addresses, and telephone  
144 numbers of association representative)....

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145  
146 If this notice is not given at least 30 days before the  
147 foreclosure action is filed, and if the unpaid assessments,  
148 including those coming due after the claim of lien is recorded,  
149 are paid before the entry of a final judgment of foreclosure,  
150 the association shall not recover attorney's fees or costs. The  
151 notice must be given by delivery of a copy of it to the unit  
152 owner or by certified or registered mail, return receipt  
153 requested, addressed to the unit owner at his or her last known  
154 address; and, upon such mailing, the notice shall be deemed to  
155 have been given, and the court shall proceed with the  
156 foreclosure action and may award attorney's fees and costs as  
157 permitted by law. The notice requirements of this subsection are  
158 satisfied if the unit owner records a notice of contest of lien  
159 as provided in subsection (5). The notice requirements of this  
160 subsection do not apply if an action to foreclose a mortgage on  
161 the condominium unit is pending before any court; if the rights  
162 of the association would be affected by such foreclosure; and if  
163 actual, constructive, or substitute service of process has been  
164 made on the unit owner.

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

167 718.121 Liens.—

168 (4) Except as otherwise provided in this chapter, no lien  
169 may be filed by the association against a condominium unit until  
170 30 days after the date on which a notice of intent to file a

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171 lien has been delivered to the owner by registered or certified  
172 mail, return receipt requested, and by first-class United States  
173 mail to the owner at his or her last address as reflected in the  
174 records of the association, if the address is within the United  
175 States, and delivered to the owner at the address of the unit if  
176 the owner's address as reflected in the records of the  
177 association is not the unit address. If the address reflected in  
178 the records is outside the United States, sending the notice to  
179 that address and to the unit address by first-class United  
180 States mail is sufficient. Delivery of the notice shall be  
181 deemed given upon mailing as required by this subsection. The  
182 notice must be in substantially the following form:

183  
184 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

185  
186 RE: Unit .... of ...(name of association)...

187  
188 The following amounts are currently due on your  
189 account to ...(name of association)..., and must be  
190 paid within 30 days after your receipt of this letter.  
191 This letter shall serve as the association's notice of  
192 intent to record a Claim of Lien against your property  
193 no sooner than 30 days after your receipt of this  
194 letter, unless you pay in full the amounts set forth  
195 below:  
196

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

203

204 \*Interest accrues at the rate of \$.... per day.

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

207 719.108 Rents and assessments; liability; lien and  
 208 priority; interest; collection; cooperative ownership.—

209 (3) Rents and assessments, and installments on them, not  
 210 paid when due bear interest at the rate provided in the  
 211 cooperative documents from the date due until paid. This rate  
 212 may not exceed the rate allowed by law and, if a rate is not  
 213 provided in the cooperative documents, accrues at 18 percent per  
 214 annum. If the cooperative documents or bylaws so provide, the  
 215 association may charge an administrative late fee in addition to  
 216 such interest, not to exceed the greater of \$25 or 5 percent of  
 217 each installment of the assessment for each delinquent  
 218 installment that the payment is late. The association may also  
 219 recover from the unit owner any reasonable charges imposed upon  
 220 the association under a written contract with its management or  
 221 bookkeeping company, or collection agent, incurred in connection  
 222 with collecting a delinquent assessment. Such charges must be

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223 based on the actual time expended performing necessary services  
224 that are not duplicative. Fees for collection are not  
225 recoverable after referral of the matter to an association's  
226 legal counsel. Any payment received by an association must be  
227 applied first to any interest accrued by the association, then  
228 to any administrative late fee, then to any costs and reasonable  
229 attorney ~~attorney's~~ fees incurred in collection, then to any  
230 reasonable costs for collection services contracted by the  
231 association, and then to the delinquent assessment. The  
232 foregoing applies notwithstanding any restrictive endorsement,  
233 designation, or instruction placed on or accompanying a payment.  
234 A late fee is not subject to chapter 687 or s. 719.303(4).

235 (4) The association has a lien on each cooperative parcel  
236 for any unpaid rents and assessments, plus interest, authorized  
237 administrative late fees and any reasonable costs for collection  
238 services contracted by the association, and any authorized  
239 administrative late fees. If authorized by the cooperative  
240 documents, the lien also secures reasonable attorney ~~attorney's~~  
241 fees incurred by the association and all reasonable collection  
242 costs incident to the collection of the rents and assessments or  
243 enforcement of such lien. The lien is effective from and after  
244 recording a claim of lien in the public records in the county in  
245 which the cooperative parcel is located which states the  
246 description of the cooperative parcel, the name of the unit  
247 owner, the amount due, and the due dates. ~~The lien expires if a~~  
248 ~~claim of lien is not filed within 1 year after the date the~~

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249 ~~assessment was due, and the lien does not continue for longer~~  
250 ~~than 1 year after the claim of lien has been recorded unless,~~  
251 ~~within that time, an action to enforce the lien is commenced.~~  
252 Except as otherwise provided in this chapter, a lien may not be  
253 filed by the association against a cooperative parcel until 30  
254 days after the date on which a notice of intent to file a lien  
255 has been delivered to the owner.

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

259  
260 NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

261  
262 RE: Unit ...(unit number)... of ...(name of  
263 cooperative)...

264  
265 The following amounts are currently due on your  
266 account to ...(name of association)..., and must be  
267 paid within 30 days after your receipt of this letter.  
268 This letter shall serve as the association's notice of  
269 intent to record a Claim of Lien against your property  
270 no sooner than 30 days after your receipt of this  
271 letter, unless you pay in full the amounts set forth  
272 below:

273  
274 Maintenance due ...(dates)... \$.....

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275	<u>Late fee, if applicable</u>	<u>\$.....</u>
276	<u>Interest through ... (dates) ...*</u>	<u>\$.....</u>
277	<u>Certified mail charges</u>	<u>\$.....</u>
278	<u>Other costs</u>	<u>\$.....</u>
279	<u>TOTAL OUTSTANDING</u>	<u>\$.....</u>

280

281 \*Interest accrues at the rate of \$.... per day.

282 1. If the most recent address of the unit owner on the  
 283 records of the association is the address of the unit, the  
 284 notice must be sent by ~~registered~~ or certified mail, return  
 285 receipt requested, to the unit owner at the address of the unit.

286 2. If the most recent address of the unit owner on the  
 287 records of the association is in the United States, but is not  
 288 the address of the unit, the notice must be sent by ~~registered~~  
 289 ~~or~~ certified mail, return receipt requested, to the unit owner  
 290 at his or her most recent address.

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

295 (b) A notice that is sent pursuant to this subsection is  
 296 deemed delivered upon mailing. A claim of lien must be executed  
 297 and acknowledged by an officer or authorized agent of the  
 298 association. The lien is not effective 1 year after the claim of  
 299 lien was recorded unless, within that time, an action to enforce  
 300 the lien is commenced. The 1-year period is automatically

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301 extended for any length of time during which the association is  
302 prevented from filing a foreclosure action by an automatic stay  
303 resulting from a bankruptcy petition filed by the parcel owner  
304 or any other person claiming an interest in the parcel. The  
305 claim of lien secures all unpaid rents and assessments that are  
306 due and that may accrue after the claim of lien is recorded and  
307 through the entry of a final judgment, as well as interest and  
308 all reasonable costs and attorney fees incurred by the  
309 association incident to the collection process. Upon payment in  
310 full, the person making the payment is entitled to a  
311 satisfaction of the lien.

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

316  
317 NOTICE OF CONTEST OF LIEN

318  
319 TO: ...(Name and address of association)...:

320  
321 You are notified that the undersigned contests the  
322 claim of lien filed by you on ....., ...(year)..., and  
323 recorded in Official Records Book .... at Page .....,  
324 of the public records of .... County, Florida, and  
325 that the time within which you may file suit to  
326 enforce your lien is limited to 90 days from the date

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327 of service of this notice. Executed this .... day of  
328 ...., ... (year)....

329 Signed: ... (Owner or Attorney)...  
330

331 After notice of contest of lien has been recorded, the clerk of  
332 the circuit court shall mail a copy of the recorded notice to  
333 the association by certified mail, return receipt requested, at  
334 the address shown in the claim of lien or most recent amendment  
335 to it and shall certify to the service on the face of the  
336 notice. Service is complete upon mailing. After service, the  
337 association has 90 days in which to file an action to enforce  
338 the lien. If the action is not filed within the 90-day period,  
339 the lien is void. However, the 90-day period shall be extended  
340 for any length of time during which the association is prevented  
341 from filing its action because of an automatic stay resulting  
342 from the filing of a bankruptcy petition by the unit owner or by  
343 any other person claiming an interest in the parcel.

344 (d) A release of lien must be in substantially the  
345 following form:  
346

347 RELEASE OF LIEN

348 The undersigned lienor, in consideration of the final payment in  
349 the amount of \$...., hereby waives and releases its lien and  
350 right to claim a lien for unpaid assessments through ....,  
351 ... (year)...., recorded in the Official Records Book .... at Page  
352 ...., of the public records of .... County, Florida, for the

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353 following described real property:

354

355 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. ....

356 OF ... (NAME OF COOPERATIVE) ..., A COOPERATIVE AS SET

357 FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS

358 ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED

359 IN OFFICIAL RECORDS BOOK ..., PAGE ..., OF THE

360 PUBLIC RECORDS OF .... COUNTY, FLORIDA.

361

362 ..(Signature of Authorized Agent)..

..(Signature of Witness)..

363 ..(Print Name)..

..(Print Name)..

364

365 ..(Signature of Witness)..

366 ..(Print Name)..

367

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

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

370 ..(Signature of Notary Public)..

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

372 Personally Known.... OR Produced.... as identification.

373 Section 6. Subsections (1), (3), (4), and (5) of section

374 720.3085, Florida Statutes, are amended to read:

375 720.3085 Payment for assessments; lien claims.-

376 (1) When authorized by the governing documents, the

377 association has a lien on each parcel to secure the payment of

378 assessments and other amounts provided for by this section.

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379 Except as otherwise set forth in this section, the lien is  
380 effective from and shall relate back to the date on which the  
381 original declaration of the community was recorded. However, as  
382 to first mortgages of record, the lien is effective from and  
383 after recording of a claim of lien in the public records of the  
384 county in which the parcel is located. This subsection does not  
385 bestow upon any lien, mortgage, or certified judgment of record  
386 on July 1, 2008, including the lien for unpaid assessments  
387 created in this section, a priority that, by law, the lien,  
388 mortgage, or judgment did not have before July 1, 2008.

389 (a) To be valid, a claim of lien must state the  
390 description of the parcel, the name of the record owner, the  
391 name and address of the association, the assessment amount due,  
392 and the due date. The claim of lien secures all unpaid  
393 assessments that are due and that may accrue subsequent to the  
394 recording of the claim of lien and before entry of a certificate  
395 of title, as well as interest, late charges, and reasonable  
396 collection costs and attorney ~~attorney's~~ fees incurred by the  
397 association incident to the collection process. The person  
398 making payment is entitled to a satisfaction of the lien upon  
399 payment in full.

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

404 NOTICE OF CONTEST OF LIEN

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405 TO: ...(Name and address of association)...

406 You are notified that the undersigned contests the claim of lien

407 filed by you on ....., ...(year)...., and recorded in Official

408 Records Book .... at page ....., of the public records of ....

409 County, Florida, and that the time within which you may file

410 suit to enforce your lien is limited to 90 days following the

411 date of service of this notice. Executed this .... day of .....,

412 ...(year)....

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

414 After the notice of a contest of lien has been recorded, the

415 clerk of the circuit court shall mail a copy of the recorded

416 notice to the association by certified mail, return receipt

417 requested, at the address shown in the claim of lien or the most

418 recent amendment to it and shall certify to the service on the

419 face of the notice. Service is complete upon mailing. After

420 service, the association has 90 days in which to file an action

421 to enforce the lien and, if the action is not filed within the

422 90-day period, the lien is void. However, the 90-day period

423 shall be extended for any length of time that the association is

424 prevented from filing its action because of an automatic stay

425 resulting from the filing of a bankruptcy petition by the parcel

426 owner or by any other person claiming an interest in the parcel.

427 (c) The association may bring an action in its name to

428 foreclose a lien for assessments in the same manner in which a

429 mortgage of real property is foreclosed and may also bring an

430 action to recover a money judgment for the unpaid assessments

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431 without waiving any claim of lien. The association is entitled  
432 to recover its reasonable attorney's fees incurred in an action  
433 to foreclose a lien or an action to recover a money judgment for  
434 unpaid assessments.

435 (d) A release of lien must be in substantially the  
436 following form:

437  
438 RELEASE OF LIEN

439 The undersigned lienor, in consideration of the final payment in  
440 the amount of \$...., hereby waives and releases its lien and  
441 right to claim a lien for unpaid assessments through .....,  
442 ...(year)..., recorded in the Official Records Book .... at Page  
443 ...., of the public records of .... County, Florida, for the  
444 following described real property:

445  
446 (PARCEL NO. .... OR LOT AND BLOCK) OF ...(subdivsion  
447 name)...SUBDIVISION AS SHOWN IN THE PLAT THEREOF,  
448 RECORDED AT PLAT BOOK ....., PAGE ....., OF THE OFFICIAL  
449 RECORDS OF ....COUNTY, FLORIDA.

450  
451 (or insert appropriate metes and bounds description  
452 here)

453  
454 ..(Signature of Authorized Agent)..      ..(Signature of Witness)..  
455 ..(Print Name)..                                      ..(Print Name)..

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..(Signature of Witness)..

..(Print Name)..

Sworn to (or affirmed) and subscribed before me this .... day of  
...., ...(year)..., by ...(name of person making statement)....

..(Signature of Notary Public)..

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

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

(e)~~(d)~~ If the parcel owner remains in possession of the parcel after a foreclosure judgment has been entered, the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

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

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

(a) If the declaration or bylaws so provide, the

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483 association may also charge an administrative late fee not to  
484 exceed the greater of \$25 or 5 percent of the amount of each  
485 installment that is paid past the due date. The association may  
486 also recover from the parcel owner any reasonable charges  
487 imposed upon the association under a written contract with its  
488 management or bookkeeping company, or collection agent, incurred  
489 in connection with collecting a delinquent assessment. Such  
490 charges must be based on the actual time expended performing  
491 necessary services that are not duplicative. Fees for collection  
492 are not recoverable after referral of the matter to an  
493 association's legal counsel.

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