

HB 7037

2014

1 A bill to be entitled

2 An act relating to residential communities; amending
3 s. 468.431, F.S.; revising the term "community
4 association management"; amending s. 718.116, F.S.;
5 authorizing a claim of lien on a condominium parcel to
6 be in a specific form; authorizing a release of lien
7 to be in a specific form; amending s. 719.108, F.S.;
8 deleting a provision providing for the expiration of
9 certain liens; revising notice requirements;
10 authorizing a claim of lien on a cooperative parcel to
11 be in a specific form; providing for the content of a
12 recording notice; authorizing a release of lien to be
13 in a specific form; amending s. 720.3085, F.S.;
14 authorizing a claim of lien on a parcel within a
15 homeowners' association to be in a specific form;
16 authorizing a release of lien to be in a specific form
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (2) of section 468.431, Florida
22 Statutes, is amended to read:

23 468.431 Definitions.—As used in this part:

24 (2) "Community association management" means any of the
25 following practices requiring substantial specialized knowledge,
26 judgment, and managerial skill when done for remuneration and

27 when the association or associations served contain more than 10
 28 units or have an annual budget or budgets in excess of \$100,000:
 29 controlling or disbursing funds of a community association,
 30 preparing budgets or other financial documents for a community
 31 association, assisting in the noticing or conduct of community
 32 association meetings, determining the number of days required
 33 for statutory notices, determining amounts due to the
 34 association, collecting amounts due to the association before
 35 filing of a civil action, calculating the votes required for a
 36 quorum or to approve a proposition or amendment, completing
 37 forms related to the management of a community association that
 38 have been created by statute or by a state agency, drafting
 39 letters of intended action, drafting meeting notices and
 40 agendas, calculating and preparing certificates of assessments,
 41 responding to requests for an estoppel letter, negotiating
 42 monetary or performance terms of a contract subject to approval
 43 by an association, drafting prearbitration demands, preparing
 44 statutory construction lien documents for association projects,
 45 coordinating or performing maintenance for real or personal
 46 property and other routine services involved in the operation of
 47 a community association, and complying with the association's
 48 governing documents and the requirements of law as necessary to
 49 perform such practices ~~and coordinating maintenance for the~~
 50 ~~residential development and other day-to-day services involved~~
 51 ~~with the operation of a community association.~~ A person who
 52 performs clerical or ministerial functions under the direct

53 supervision and control of a licensed manager or who is charged
 54 only with performing the maintenance of a community association
 55 and who does not assist in any of the management services
 56 described in this subsection is not required to be licensed
 57 under this part.

58 Section 2. Subsection (5) of section 718.116, Florida
 59 Statutes, is amended to read:

60 718.116 Assessments; liability; lien and priority;
 61 interest; collection.—

62 (5) (a) The association has a lien on each condominium
 63 parcel to secure the payment of assessments. Except as otherwise
 64 provided in subsection (1) and as set forth below, the lien is
 65 effective from and shall relate back to the recording of the
 66 original declaration of condominium, or, in the case of lien on
 67 a parcel located in a phase condominium, the last to occur of
 68 the recording of the original declaration or amendment thereto
 69 creating the parcel. However, as to first mortgages of record,
 70 the lien is effective from and after recording of a claim of
 71 lien in the public records of the county in which the
 72 condominium parcel is located. Nothing in this subsection shall
 73 be construed to bestow upon any lien, mortgage, or certified
 74 judgment of record on April 1, 1992, including the lien for
 75 unpaid assessments created herein, a priority which, by law, the
 76 lien, mortgage, or judgment did not have before that date.

77 (b) ~~To be valid,~~ A claim of lien may be in substantially
 78 the following form:

79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104

CLAIM OF LIEN

Before me, the undersigned notary public, personally appeared
...(name)..., who was duly sworn and says that he/she is the
authorized agent of the lienor, ...(name of association)...,
whose address is ...(address)..., and that in accordance with
the Condominium Act and the declaration of ...(name of
association)..., a condominium, and the articles of
incorporation and bylaws of the association, the association
makes this claim of lien for ...(basis for claim of lien)...,
for the following described real property:

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

upon which the association asserts this lien. The property is
owned by ...(name of debtor)..., Debtor. There remains unpaid to

105 the association, the sum of \$..... This lien secures these
 106 amounts, as well as any amounts and assessments and interest
 107 that may accrue in the future.

109 (signature of witness) (signature of authorized agent)

111 (signature of witness)

113 Sworn to (or affirmed) and subscribed before me this day of
 114, ...(year)...., by ...(name of person making statement)....
 115 ...(Signature of Notary Public)...
 116 ...(Print, type, or stamp commissioned name of Notary Public)...
 117 Personally Known.... OR Produced.... as identification.

119 ~~must state the description of the condominium parcel, the name~~
 120 ~~of the record owner, the name and address of the association,~~
 121 ~~the amount due, and the due dates.~~ It must be executed and
 122 acknowledged by an officer or authorized agent of the
 123 association. The lien is not effective 1 year after the claim of
 124 lien was recorded unless, within that time, an action to enforce
 125 the lien is commenced. The 1-year period is automatically
 126 extended for any length of time during which the association is
 127 prevented from filing a foreclosure action by an automatic stay
 128 resulting from a bankruptcy petition filed by the parcel owner
 129 or any other person claiming an interest in the parcel. The
 130 claim of lien secures all unpaid assessments that are due and

131 that may accrue after the claim of lien is recorded and through
 132 the entry of a final judgment, as well as interest and all
 133 reasonable costs and attorney's fees incurred by the association
 134 incident to the collection process. Upon payment in full, the
 135 person making the payment is entitled to a satisfaction of the
 136 lien.

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

141 NOTICE OF CONTEST OF LIEN

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

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

150
 151 After notice of contest of lien has been recorded, the clerk of
 152 the circuit court shall mail a copy of the recorded notice to
 153 the association by certified mail, return receipt requested, at
 154 the address shown in the claim of lien or most recent amendment
 155 to it and shall certify to the service on the face of the
 156 notice. Service is complete upon mailing. After service, the

157 association has 90 days in which to file an action to enforce
 158 the lien; and, if the action is not filed within the 90-day
 159 period, the lien is void. However, the 90-day period shall be
 160 extended for any length of time during which the association is
 161 prevented from filing its action because of an automatic stay
 162 resulting from the filing of a bankruptcy petition by the unit
 163 owner or by any other person claiming an interest in the parcel.

164 (d) A release of lien may be in substantially the
 165 following form:

166
 167 RELEASE OF LIEN
 168

169 The undersigned lienor, in consideration of the final payment in
 170 the amount of \$...., hereby waives and releases its lien and
 171 right to claim a lien for unpaid assessments through,
 172 ...(year)...., for the following described real property:

173
 174 UNIT NO. OF (NAME OF CONDOMINIUM), A CONDOMINIUM
 175 AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE
 176 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,
 177 RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF
 178 THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE
 179 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
 180 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED,
 181 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
 182 ELEMENTS OF SAID CONDOMINIUM.

183
 184 (signature of witness) (signature of authorized agent)

185
 186 (signature of witness)

187
 188 Sworn to (or affirmed) and subscribed before me this day of
 189, ...(year)..., by ...(name of person making statement)....
 190 ...(Signature of Notary Public)...
 191 ...(Print, type, or stamp commissioned name of Notary Public)...

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

193 Section 3. Subsection (4) of section 719.108, Florida
 194 Statutes, is amended to read:

195 719.108 Rents and assessments; liability; lien and
 196 priority; interest; collection; cooperative ownership.-

197 (4) The association has a lien on each cooperative parcel
 198 for any unpaid rents and assessments, plus interest, and any
 199 authorized administrative late fees. If authorized by the
 200 cooperative documents, the lien also secures reasonable
 201 attorney's fees incurred by the association incident to the
 202 collection of the rents and assessments or enforcement of such
 203 lien. The lien is effective from and after recording a claim of
 204 lien in the public records in the county in which the
 205 cooperative parcel is located which states the description of
 206 the cooperative parcel, the name of the unit owner, the amount
 207 due, and the due dates. ~~The lien expires if a claim of lien is~~
 208 ~~not filed within 1 year after the date the assessment was due,~~

209 ~~and the lien does not continue for longer than 1 year after the~~
 210 ~~claim of lien has been recorded unless, within that time, an~~
 211 ~~action to enforce the lien is commenced.~~ Except as otherwise
 212 provided in this chapter, a lien may not be filed by the
 213 association against a cooperative parcel until 30 days after the
 214 date on which a notice of intent to file a lien has been
 215 delivered to the owner.

216 (a) The notice must be sent to the unit owner at the
 217 address of the unit by first-class United States mail and:

218 1. If the most recent address of the unit owner on the
 219 records of the association is the address of the unit, the
 220 notice must be sent by ~~registered or~~ certified mail, return
 221 receipt requested, to the unit owner at the address of the unit.

222 2. If the most recent address of the unit owner on the
 223 records of the association is in the United States, but is not
 224 the address of the unit, the notice must be sent by ~~registered~~
 225 ~~or~~ certified mail, return receipt requested, to the unit owner
 226 at his or her most recent address.

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

231 ~~(b)~~

232 A notice that is sent pursuant to this paragraph ~~subsection~~ is
 233 deemed delivered upon mailing.

234 (b) A claim of lien may be in substantially the following

235 form:

236

237 CLAIM OF LIEN

238

239 Before me, the undersigned notary public, personally appeared
 240 ...(name)... who was duly sworn and says that he/she is the
 241 authorized agent of the lienor, ...(name of association)...,
 242 whose address is ...(address)..., and that in accordance with
 243 the Cooperative Act and the cooperative documents of ...(name of
 244 association...), a cooperative, and the articles of
 245 incorporation and bylaws of the association, the association
 246 makes this claim of lien for (basis for claim of lien), for the
 247 following described real property:

248

249 UNIT NO. OF ...(NAME OF COOPERATIVE)... , A
 250 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
 251 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 252 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 253, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 254 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
 255 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
 256 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
 257 COMMON ELEMENTS OF SAID COOPERATIVE.

258

259 Upon which the association asserts this lien. The property is
 260 owned by ...(name of debtor)..., Debtor. There remains unpaid to

261 the association, the sum of \$..... This lien secures these
 262 amounts, as well as any amounts and assessments and interest
 263 that may accrue in the future.

264
 265 (signature of witness) (signature of authorized agent)

266
 267 (signature of witness)

268
 269 Sworn to (or affirmed) and subscribed before me this day of
 270, ...(year)...., by ...(name of person making statement)....
 271 ...(Signature of Notary Public)...
 272 ...(Print, type, or stamp Commissioned name of Notary Public)...
 273 Personally Known.... OR Produced.... as identification.

274
 275 The claim must be executed and acknowledged by an officer or
 276 authorized agent of the association. The lien is not effective 1
 277 year after the claim of lien was recorded unless, within that
 278 time, an action to enforce the lien is commenced. The 1-year
 279 period is automatically extended for any length of time during
 280 which the association is prevented from filing a foreclosure
 281 action by an automatic stay resulting from a bankruptcy petition
 282 filed by the parcel owner or any other person claiming an
 283 interest in the parcel. The claim of lien secures all unpaid
 284 rents and assessments that are due and that may accrue after the
 285 claim of lien is recorded and through the entry of a final
 286 judgment, as well as interest and all reasonable costs and

287 attorney's fees incurred by the association incident to the
 288 collection process. Upon payment in full, the person making the
 289 payment is entitled to a satisfaction of the lien.

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

294
 295 NOTICE OF CONTEST OF LIEN
 296

297 TO: ...(Name and address of association)... You are
 298 notified that the undersigned contests the claim of lien filed
 299 by you on, ...(year)...., and recorded in Official Records
 300 Book at Page, of the public records of County,
 301 Florida, and that the time within which you may file suit to
 302 enforce your lien is limited to 90 days from the date of service
 303 of this notice. Executed this day of, ...(year)....
 304 Signed: ...(Owner or Attorney)...

305
 306 After notice of contest of lien has been recorded, the clerk of
 307 the circuit court shall mail a copy of the recorded notice to
 308 the association by certified mail, return receipt requested, at
 309 the address shown in the claim of lien or most recent amendment
 310 to it and shall certify to the service on the face of the
 311 notice. Service is complete upon mailing. After service, the
 312 association has 90 days in which to file an action to enforce

313 the lien; and, if the action is not filed within the 90-day
 314 period, the lien is void. However, the 90-day period shall be
 315 extended for any length of time during which the association is
 316 prevented from filing its action because of an automatic stay
 317 resulting from the filing of a bankruptcy petition by the unit
 318 owner or by any other person claiming an interest in the parcel.

319 (d) A release of lien may be in substantially the
 320 following form:

321
 322 RELEASE OF LIEN
 323

324 The undersigned lienor, in consideration of the final payment in
 325 the amount of \$...., hereby waives and releases its lien and
 326 right to claim a lien for unpaid assessments through,
 327 ...(year)..., for the following described real property:

328
 329 UNIT NO. OF (NAME OF COOPERATIVE), A COOPERATIVE
 330 AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE
 331 EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF,
 332 RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF
 333 THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE
 334 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
 335 APPURTENANCES TO THE COOPERATIVE UNIT ABOVE DESCRIBED,
 336 INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
 337 ELEMENTS OF SAID COOPERATIVE.
 338

339 (signature of witness) (signature of authorized agent)

340

341 (signature of witness)

342

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

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

345 ...(Signature of Notary Public)...

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

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

348 Section 4. Subsection (1) of section 720.3085, Florida
349 Statutes, is amended to read:

350 720.3085 Payment for assessments; lien claims.-

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

364 (a) ~~To be valid,~~ A claim of lien may be in substantially

365 the following form:

366

367 CLAIM OF LIEN

368

369 Before me, the undersigned notary public, personally appeared
 370 ...(name)... who was duly sworn and says that he/she is the
 371 authorized agent of the lienor, ...(name of association)...,
 372 whose address is ...(address)..., and that in accordance with
 373 the Florida Statutes and the homeowners' association documents
 374 of ...(name of association)..., a homeowners' association, and
 375 the articles of incorporation and bylaws of the association, the
 376 association makes this claim of lien for ...(basis for claim of
 377 lien)..., for the following described real property:

378

379 (PARCEL NO. OR LOT AND BLOCK) OF (NAME OF
 380 HOMEOWNERS' ASSOCIATION), A HOMEOWNERS' ASSOCIATION AS
 381 SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS AND
 382 THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 383 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 384, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

385

386 (or insert appropriate metes and bounds description
 387 here)

388

389 upon which the association asserts this lien. The property is
 390 owned by ...(name of debtor)..., Debtor. There remains unpaid to

391 the association, the sum of \$..... This lien secures these
 392 amounts, as well as any amounts and assessments and interest
 393 that may accrue in the future.

394
 395 (signature of witness) (signature of authorized agent)

396
 397 (signature of witness)

398
 399 Sworn to (or affirmed) and subscribed before me this day of
 400, ...(year)...., by ...(name of person making statement)....
 401 ...(Signature of Notary Public)...
 402 ...(Print, type, or stamp commissioned name of Notary Public)...
 403 Personally Known.... OR Produced.... as identification.

404
 405 ~~must state the description of the parcel, the name of the record~~
 406 ~~owner, the name and address of the association, the assessment~~
 407 ~~amount due, and the due date.~~ The claim of lien secures all
 408 unpaid assessments that are due and that may accrue subsequent
 409 to the recording of the claim of lien and before entry of a
 410 certificate of title, as well as interest, late charges, and
 411 reasonable costs and attorney's fees incurred by the association
 412 incident to the collection process. The person making payment is
 413 entitled to a satisfaction of the lien upon payment in full.

414 (b) By recording a notice in substantially the following
 415 form, a parcel owner or the parcel owner's agent or attorney may
 416 require the association to enforce a recorded claim of lien

417 against his or her parcel:

418 NOTICE OF CONTEST OF LIEN

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

420 You are notified that the undersigned contests the claim of lien
 421 filed by you on, ...(year)..., and recorded in Official
 422 Records Book at page, of the public records of
 423 County, Florida, and that the time within which you may file
 424 suit to enforce your lien is limited to 90 days following the
 425 date of service of this notice. Executed this day of,
 426 ...(year)....

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

428 After the notice of a contest of lien has been recorded, the
 429 clerk of the circuit court shall mail a copy of the recorded
 430 notice to the association by certified mail, return receipt
 431 requested, at the address shown in the claim of lien or the most
 432 recent amendment to it and shall certify to the service on the
 433 face of the notice. Service is complete upon mailing. After
 434 service, the association has 90 days in which to file an action
 435 to enforce the lien and, if the action is not filed within the
 436 90-day period, the lien is void. However, the 90-day period
 437 shall be extended for any length of time that the association is
 438 prevented from filing its action because of an automatic stay
 439 resulting from the filing of a bankruptcy petition by the parcel
 440 owner or by any other person claiming an interest in the parcel.

441 (c) The association may bring an action in its name to
 442 foreclose a lien for assessments in the same manner in which a

443 mortgage of real property is foreclosed and may also bring an
 444 action to recover a money judgment for the unpaid assessments
 445 without waiving any claim of lien. The association is entitled
 446 to recover its reasonable attorney's fees incurred in an action
 447 to foreclose a lien or an action to recover a money judgment for
 448 unpaid assessments.

449 (d) A release of lien may be in substantially the
 450 following form:

451
 452 RELEASE OF LIEN

453
 454 The undersigned lienor, in consideration of the final payment in
 455 the amount of \$...., hereby waives and releases its lien and
 456 right to claim a lien for unpaid assessments through,
 457 ...(year)..., for the following described real property:

458
 459 (PARCEL NO. OR LOT AND BLOCK) OF ... (NAME OF
 460 HOMEOWNERS' ASSOCIATION)...., A HOMEOWNERS' ASSOCIATION
 461 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
 462 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 463 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 464, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

465
 466 (or insert appropriate metes and bounds description
 467 here)

469 (signature of witness) (signature of authorized agent)

470

471 (signature of witness)

472

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

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

475 ...(Signature of Notary Public)...

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

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

478

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

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

490 Section 5. This act shall take effect July 1, 2014.