

Committee Substitute for Senate Bill No. 1844

An act relating to homeowners' associations; creating s. 720.3085, F.S.; providing that a parcel owner is liable for all assessments on a parcel; providing for the payment of interest and late fees on unpaid assessments; prioritizing the application of any payment received; prohibiting the placement of a restriction statement on the payment; providing for the filing of a claim of lien for unpaid assessments; providing for the foreclosure of the lien; providing for notice to the owner; providing for a qualifying offer from the owner; providing an effective date.

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

Section 1. Section 720.3085, Florida Statutes, is created to read:

720.3085 Payment for assessments; lien claims.—

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

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

(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 association may also charge an administrative late fee in an amount not to exceed the greater of \$25 or 5 percent of the amount of each installment that is paid past the due date.

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

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

(a) Provide the owner with 45 days to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand.

(b) Be sent by registered or certified mail, return receipt requested, and by first-class United States Mail to the parcel owner at his or her last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address. If the address reflected in the records is outside the United States, then sending the notice to that address and to the parcel address by first-class United States mail is sufficient.

(5) The association may bring an action in its name to foreclose a lien for unpaid assessments secured by a lien in the same manner that 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. Such action may not be brought until 45 days after the parcel owner has been provided notice of the association's intent to foreclose and collect the unpaid amount.

(a) The association may recover any reasonable attorney's fees incurred in a lien foreclosure action or in an action to recover a money judgment for the unpaid assessments.

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

(6) If after service of a summons on a complaint to foreclose a lien the parcel is not the subject of a mortgage foreclosure or a notice of tax certificate sale, or the parcel owner is not a debtor in bankruptcy proceedings, the parcel owner may serve and file with the court a qualifying offer at any time before the entry of a foreclosure judgment. For purposes of this subsection, the term "qualifying offer" means a written offer to pay all amounts secured by the lien of the association plus interest accruing during the pendency of the offer at the rate of interest provided in this section. The parcel owner may make only one qualifying offer during the pendency of a foreclosure action.

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

(b) The parcel owner's filing of the qualifying offer with the court stays the foreclosure action for the period stated in the qualifying offer, which may not exceed 60 days, to permit the parcel owner to pay the qualifying offer

to the association plus any interest accruing during the pendency of the offer.

(c) The qualifying offer of the parcel owner must be in writing, be signed by the owner of the parcel and the spouse of the owner if the spouse holds a homestead interest in the parcel, be acknowledged by a notary public, state the total amount due the association, state that the total amount due the association is secured by the lien of the association, state that the association is entitled to foreclose the lien and obtain a foreclosure judgment for the total amount due if the parcel owner breaches the qualifying offer, state that the parcel owner will not endanger the priority of the lien of the association or the amounts secured by the lien, and state the actual date or dates the association will receive the total amount due from the parcel owner. If the parcel owner makes a qualifying offer under this subsection, the association may not add the cost of any legal fees incurred by the association within the period of the stay other than costs acquired in defense of a mortgage foreclosure action concerning the parcel, a bankruptcy proceeding in which the parcel owner is a debtor, or in response to filings by a party other than the association in the lien foreclosure action of the association.

(d) If the parcel owner breaches the qualifying offer, the stay shall be vacated and the association may proceed in its action to obtain a foreclosure judgment against the parcel and the parcel owners for the amount in the qualifying offer and any amounts accruing after the date of the qualifying offer.

Section 2. This act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.