

CHAPTER 2014-146

Committee Substitute for Committee Substitute for House Bill No. 7037

An act relating to residential communities; amending s. 468.431, F.S.; revising the term “community association management”; creating s. 468.4334, F.S.; providing powers and duties of community association managers and community association management firms; authorizing the indemnification of a community association manager or community association management firm under certain conditions; amending s. 718.116, F.S.; requiring a release of lien to be in a specific form; requiring a pre-foreclosure notice to be in a specific form; amending s. 718.121, F.S.; requiring a pre-lien notice to be in a specific form; amending s. 719.108, F.S.; deleting a provision providing for the expiration of certain liens; revising notice requirements; requiring a pre-lien notice to be in a specific form; providing for execution and effect of lien; providing for the content of a recording notice; requiring a release of lien to be in a specific form; amending s. 720.3085, F.S.; requiring a release of lien to be in a specific form; requiring a pre-lien notice to be in a specific form; requiring a pre-foreclosure notice to be in a specific form; providing requirements for the execution of a claim of lien; providing an effective date.

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

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

468.431 Definitions.—As used in this part:

(2) “Community association management” means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a

community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Section 2. Section 468.4334, Florida Statutes, is created to read:

468.4334 Professional practice standards; liability.—

(1) A community association manager or 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 behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

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

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

Section 3. Paragraph (d) is added to subsection (5) of section 718.116, Florida Statutes, and subsection (6) of that section is amended, to read:

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

(5)

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

RELEASE OF LIEN

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

...(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.

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

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

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

DELINQUENT ASSESSMENT

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

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

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

....

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

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

718.121 Liens.—

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on

which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner’s address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

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 may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney’s~~ fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding any

restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. ~~The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced.~~ Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

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

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

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.

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

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the

notice must be sent by ~~registered or~~ certified mail, return receipt requested, to the unit owner at his or her most recent address.

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

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

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

NOTICE OF CONTEST OF LIEN

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

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

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

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

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

RELEASE OF LIEN

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

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

...(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.

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

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the

public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

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

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

RELEASE OF LIEN

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

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

(or insert appropriate metes and bounds description here)

...(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.

(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.

(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 record 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 following the date the notice is deposited in the mail 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. The notice must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Parcel or (lot/block)...(lot/parcel number)... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)...., and must be paid within 45 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 45 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.

(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. The action to foreclose the lien 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. The notice must be given in the manner provided in paragraph (4)(b), and the notice may not be provided until the passage of the 45 days required in paragraph (4)(a). The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the ...(type of assessment)... assessment to ...(name of association)... The association intends to foreclose the lien and collect the unpaid amount within 45 days of this letter being provided to you.

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

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

(a) The association may recover any interest, late charges, costs, and 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 time limitations in this subsection do not apply if the parcel is subject to a foreclosure action or forced sale of another party, or if an owner of the parcel is a debtor in a bankruptcy proceeding.

Section 7. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.