

## Senate Bill No. 1986

An act relating to lien claims by homeowners' associations; amending s. 720.3085, F.S.; providing that when authorized by the governing documents, a homeowners' association has a lien on each parcel to secure the payment of assessments and other amounts; providing an exception to first mortgages of record; providing that the act does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, a priority that the lien, mortgage, or judgment did not have before that date; providing for the elements of a valid claim of lien; providing for the content of a recording notice; requiring a parcel owner or the parcel owner's agent or attorney to require the homeowners' association to enforce a recorded claim of lien against his or her parcel; providing procedures for notifying the homeowners' association; requiring that service be made by certified mail, return receipt requested; authorizing the homeowners' association to bring a civil action to foreclose a lien for assessments in the same manner in which a mortgage of real property is foreclosed; providing that the homeowners' association may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien; providing that if a 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; providing that the homeowners' association may purchase the parcel at the foreclosure sale and hold, lease, mortgage, or convey the parcel; limiting the liability of a first mortgagee or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title; providing that the time limitations in the act do not apply if the parcel is subject to a foreclosure action or forced sale of another party; providing for a qualified offer during the pendency of a foreclosure action; providing procedures for offering and accepting a qualifying offer; requiring that the qualifying offer be in a particular format; providing an effective date.

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

Section 1. Section 720.3085, Florida Statutes, is amended 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 shall secure 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's fees incurred by the association incident to the collection process. The person making the payment is entitled to a satisfaction of the lien upon payment in full.

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

#### NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the under-  
signed 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 following the date of service of this notice. Executed this  
.... day of ....., ...(year)....

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

After the notice of a 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  
the 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 that the association is pre-  
vented from filing its action because of an automatic stay resulting from the  
filing of a bankruptcy petition by the parcel owner or by any other person  
claiming an interest in the parcel.

(c) The association may bring an action in its name to foreclose a lien for  
assessments in the same manner in which 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 an action to  
foreclose a lien or an action to recover a money judgment for unpaid assess-  
ments.

(d) If the parcel owner remains in possession of the parcel after a foreclo-  
sure 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.

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

(2)(a)(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.

(b)(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.

(c) Notwithstanding anything to the contrary contained in this section, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title, shall be the lesser of:

1. The parcel's unpaid common expenses and regular periodic or special assessments that accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

2. One percent of the original mortgage debt.

The limitations on first mortgage liability provided by this paragraph apply only if the first mortgagee filed suit against the parcel owner and initially joined the association as a defendant in the mortgage foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

(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 accompany-

ing 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 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 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.

(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 Such 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).

(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. 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, or the trial of or trial docket for the lien foreclosure action is not set to begin within 30 days,~~ 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 amounts 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. If a parcel becomes the subject of a mortgage foreclosure or a notice of tax certificate sale while a qualifying offer is pending, the qualifying offer becomes voidable at the election of the association. If the parcel owner becomes a debtor in bankruptcy proceedings while a qualifying offer is pending, the qualifying offer becomes void.

(a) The parcel owner shall deliver a copy of the filed qualifying offer to the association's attorney by hand delivery, obtaining a written receipt, 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 following the date of service of the qualifying offer and no sooner than 30 days before the date of trial, arbitration, or the beginning of the trial docket, whichever occurs first, to permit the parcel owner to pay the qualifying offer to the association plus any amounts interest accruing during the pendency of the offer.

(c) ~~The qualifying offer of the parcel owner must be in writing, be signed by all owners the owner of the parcel and the spouse of any the owner if the spouse resides in or otherwise claims holds a homestead interest in the parcel, be acknowledged by a notary public, and be in substantially the following form: 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.~~

**QUALIFYING OFFER**  
**AUTOMATIC STAY INVOKED PURSUANT TO F.S. 720.3085**

I/We, [Name(s) of Parcel Owner(s)], admit the following:

1. The total amount due the association is secured by the lien of the association.

2. The association is entitled to foreclose its claim of lien and obtain a foreclosure judgment for the total amount due if I/we breach this qualifying offer by failing to pay the amount due by the date specified in this qualifying offer.

3. I/We will not permit the priority of the lien of the association or the amounts secured by the lien to be endangered.

4. I/We hereby affirm that the date(s) by which the association will receive \$ [specify amount] as the total amount due is [specify date, no later than 60 days after the date of service of the qualifying offer and at least 30 days before the trial or arbitration date], in the following amounts and dates:

5. I/We hereby confirm that I/we have requested and have received from the homeowners' association a breakdown and total of all sums due the

association and that the amount offered above is equal to or greater than the total amount provided by the association.

6. This qualifying offer operates as a stay to all portions of the foreclosure action which seek to collect unpaid assessments as provided in s. 720.3085.

Signed: ...(Signatures of all parcel owners and spouses, if any)...

Sworn to and subscribed this ...(date)... day of ...(month)...., ...(year)...., before the undersigned authority.

Notary Public: ...(Signature of notary public)...

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.

~~(7)(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, 2008.

Approved by the Governor June 17, 2008.

Filed in Office Secretary of State June 17, 2008.