

Amendment No.

CHAMBER ACTION

Senate

House



1 Representative Sands offered the following:

2

3 **Substitute Amendment for Amendment (768683) (with title**  
4 **amendment)**

5 Remove lines 5-119 and insert:

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

8 720.3085 Payment for assessments; lien claims.--

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

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

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

29       (a) If the declaration or bylaws so provide, the  
30 association may also charge an administrative late fee in an  
31 amount not to exceed the greater of \$25 or 5 percent of the  
32 amount of each installment that is paid past the due date.

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

41       (4) A homeowners' association may not file a claim of lien  
42 against a parcel for unpaid assessments unless a written notice  
43 or demand for past due assessments as well as any other amounts

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44 owed to the association pursuant to its governing documents has  
45 been made by the association. The written notice or demand must:

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

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

60 (5) The association may bring an action in its name to  
61 foreclose a lien for unpaid assessments secured by a lien in the  
62 same manner that a mortgage of real property is foreclosed and  
63 may also bring an action to recover a money judgment for the  
64 unpaid assessments without waiving any claim of lien. Such  
65 action may not be brought until 45 days after the parcel owner  
66 has been provided notice of the association's intent to  
67 foreclose and collect the unpaid amount.

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

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

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

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

89       (b) The parcel owner's filing of the qualifying offer with  
90 the court stays the foreclosure action for the period stated in  
91 the qualifying offer, which may not exceed 60 days, to permit  
92 the parcel owner to pay the qualifying offer to the association  
93 plus any interest accruing during the pendency of the offer.

94       (c) The qualifying offer of the parcel owner must be in  
95 writing, be signed by the owner of the parcel and the spouse of  
96 the owner if the spouse holds a homestead interest in the  
97 parcel, be acknowledged by a notary public, state the total  
98 amount due the association, state that the total amount due the

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99 association is secured by the lien of the association, state  
100 that the association is entitled to foreclose the lien and  
101 obtain a foreclosure judgment for the total amount due if the  
102 parcel owner breaches the qualifying offer, state that the  
103 parcel owner will not endanger the priority of the lien of the  
104 association or the amounts secured by the lien, and state the  
105 actual date or dates the association will receive the total  
106 amount due from the parcel owner. If the parcel owner makes a  
107 qualifying offer under this subsection, the association may not  
108 add the cost of any legal fees incurred by the association  
109 within the period of the stay other than costs acquired in  
110 defense of a mortgage foreclosure action concerning the parcel,  
111 a bankruptcy proceeding in which the parcel owner is a debtor,  
112 or in response to filings by a party other than the association  
113 in the lien foreclosure action of the association.

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

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

120

121 ===== T I T L E A M E N D M E N T =====

122 Remove lines 123-133 and insert:

123 A bill to be entitled

124 An act relating to homeowners' associations; creating s.

125 720.3085, F.S.; providing that a parcel owner is liable for all

126 assessments on a parcel; providing for the payment of interest

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HOUSE AMENDMENT

Bill No. CS/HB 1465

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127 and late fees on unpaid assessments; prioritizing the  
128 application of any payment received; prohibiting the placement  
129 of a restriction statement on the payment; providing for the  
130 filing of a claim of lien for unpaid assessments; providing for  
131 the foreclosure of the lien; providing for notice to the owner;  
132 providing for a qualifying offer from the owner; providing an  
133 effective date.

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