

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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(LATE FILED)

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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