

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1465 Overdue Assessments and Fees
SPONSOR(S): Sands
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u></u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Condominium associations, cooperative associations, and homeowners associations all have the power to make and collect assessments. These assessments allow the association to carry out its responsibility for the management, operation, and management of the association property and common elements.

This bill provides that condominium, cooperative, and homeowners associations must give notice by registered or certified mail when they file a claim of lien against an association member for non-payment of their required assessments or other fees.

This bill also provides that attorney's fees assessed against the association member as a result of an association's efforts to collect unpaid assessments must be paid by the association member before a 90-day time period has expired.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Condominium associations are regulated by ch. 718, F.S., cooperative associations are regulated by ch. 719, F.S., and homeowners associations are regulated by ch. 720, F.S. Condominium associations, cooperative associations, and homeowners associations all have the power to make and collect assessments.¹ These assessments allow the association to carry out its responsibility for the operation and management of the association property and common elements. The ability of an association to levy and collect assessments is part of the plan to maintain the properties for the benefit of all of the association members who own and reside in a condominium, cooperative, or residential neighborhood. To be ultimately successful, each owner must pay the share for which he or she is responsible. When an association member does not pay his or her assessments, then the association has the authority to issue a lien on the member's property to secure payment. This authority is granted to associations in current law.²

Section 718.116(6)(b), F.S., relating to condominium associations, provides that 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 any unpaid assessments. 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 cannot 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.

There are no statutory provisions in ch. 719 or 720, F.S. requiring a cooperative association or homeowners association to give notice to an association member when there is a claim of lien on their property or prior to foreclosing on the lien, and there are no provisions relating to the payment of attorney's fees incurred during these foreclosure cases.

Effect of Bill

This bill provides that when a condominium association, cooperative association, and a homeowners association files a lien on an association member's property for unpaid assessments or fees, then the association must notify the property owner by certified or registered mail.

The bill also provides that if attorney's fees are assessed against the property owner as a result of the associations efforts to collect the unpaid assessments that resulted in the lien, then the property owner must pay the attorney's fees, including interest, within 90 days.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section relating to notice of liens filed by a condominium, cooperative, or homeowners association.

¹ Sections 718.111(4), 719.104(5), and 720.308, F.S.

² Sections 718.116, 719.108(4), and 720.301(1) and (11), F.S.

Section 2 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require condominium associations, cooperative associations and homeowners associations to pay an additional postal fee of \$2.50 for certified mail and a minimum of \$7.90 for registered mail to give notice on a claim of lien that they file with a court for failure of an association member to pay their required assessment.³

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Similar notice requirements for foreclosing on a lien for unpaid assessments are already provided for in the condominium law at s. 718.116, F.S. This bill would require notice be sent to the member by

³ Postage rates were obtained from the U.S. Postal Service's website (www.usps.com).

certified or registered mail when the lien is filed with the court and again 30 days prior to the foreclosure proceedings to enforce the lien. There is also already a similar provision for attorney's fees in the current condominium law.

This bill does not provide for any timeframe for which the notice must be given to the association member that is delinquent in paying their assessments.

This bill also does not provide for when the 90-day period for payment of attorney's fees is to start.

It appears to be unclear what the interest rate would be for non-payment of attorney's fees. There is not a pre-determined set interest rate for non-payment of attorney's fees as provided in this bill.

It is unclear why the bill references registered mail. Section 1.01(11), F.S., provides that any statutory requirement to use registered mail may be satisfied by using the less expensive certified mail.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A