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MEMORANDUM

**TO: Joseph Piekarski, Tropical Bay Estates Homeowners Assoc
President**

FROM: Laurence W. B. Cumberland

RE: Liens

DATE: October 30, 2013

As you will recall I have been suggesting for some time that Florida might have a statute similar to that in Maryland which allows a HOA to easily get liens for delinquent assessments without the necessity of a lawyer. At the last board meeting you directed me to research the same. While I am not licensed to practice in Florida I had the matter researched and, as suspected, such a statute does in fact exist in Florida. It is even simpler and more user-friendly than the Maryland statute.

I have attached a proposed draft letter to send out, a proposed form for a statement of lien, and portions of the applicable statute. As you can see, we may do this ourselves and no legal fees whatsoever are necessary.

In Maryland a lien, once placed, lasts indefinitely unless extinguished by some extraordinary action such as foreclosure or a tax sale. It is almost invariably satisfied when the property changes hands and settles. Again, I am not licensed to practice law in Florida but I assume that the same procedure exists there.

I would simply mention in passing that I represent and have represented over the years a number of homeowner's associations who have sought my help to collect dues. On each occasion I have advised my client in advance of this procedure which allows them to collect the dues themselves without the necessity of any legal fees.

Please let me know if you would like any further help.

DATE

Address of Property Owner

RE: Lot #, HOA, TOWN, Florida

Dear Mr. and Mrs. NAME:

This is your notice, pursuant to the Florida Statute Title 40, Chapter 720, § 3085, that the Association intends to place a lien on the referenced property.

Section 720.3085(4) of the Homeowners' Associations section of the Real and Personal Property Florida Statute, requires that you be given the following information:

1. This is a written demand for past due assessments AS WELL AS ANY OTHER AMOUNTS OWED PURSUANT TO (cite the government HOA document). —?
2. You have failed to pay fees owed to the NAME HOA which were levied pursuant to SECTION of the CONTROLLING DOCUMENT. < ?
3. The amount of damages: \$
4. Legal description of property against which the lien is intended to be imposed:
5. You have Forty Five (45) days from the date of this notice to make payment for all amounts due, including, but not limited to, attorney's fees and actual costs associated with the preparation and delivery of the written demand.

Sincerely,

Encl.
Outstanding balance, interest and fees

TITLE TBPOA

STATEMENT OF LIEN

For LOT#:

This is to certify that the property described as LEGAL DESCRIPTION, is subject to a lien under Title 40, Chapter 720 Section 3085 of the Real and Personal Property, Florida Statute, in the amount of \$TOTAL, due on DATE. The property is owned by NAME, ADDRESS. HOA NAME's address is:

This sum represents NUMBER years of unpaid regular assessments at \$AMOUNT per year, plus (any other outstanding expenses) plus #% interest per year, as provided in CONTROLLING HOA DOCUMENT or cite 720.3085(3).

LOOK @ RATE OF INTEREST

HOA has incurred \$ of attorney's fees in its efforts to obtain the regular annual assessments and other amounts listed above as of the date of this Statement of Lien.

I hereby affirm under the penalty of perjury that notice was given under § 720.3085(4) of the Real and Personal Property Florida Statute, and that the information contained in the foregoing statement of lien is true and correct to the best of my knowledge, information, and belief.

NAME
President
HOA

DATE

File Monroe County

*LAND RECORDS
OR where you FILE DEEDS*

ANDREA



1 of 1 DOCUMENT

LexisNexis (R) Florida Annotated Statutes
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*** Statutes and Constitution are updated through the 2013 Regular Session.***
*** Annotations are current through October 7, 2013 ***

TITLE 40. REAL AND PERSONAL PROPERTY (Chs. 689-723)
CHAPTER 720. HOMEOWNERS' ASSOCIATIONS
PART I. GENERAL PROVISIONS

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 720.3085 (2013)

§ 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'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.

(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 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 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 prevented 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 assessments.

(d) If the 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. 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) 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) 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. For the purposes of this paragraph, the term "previous owner" shall not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

(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 mortgagee 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 mortgagee 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.

(d) An association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the parcel. This paragraph is intended to clarify existing law.

(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 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 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.

(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).

(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.

(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, 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 accruing during the pendency of the offer. 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 accruing during the pendency of the offer.

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

QUALIFYING OFFER