



SB 1844 Contains Provisions On Assessment Collections

New law applies to all homeowner groups

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Today's column completes our review of laws adopted during the 2007 Regular Session of the Florida Legislature, applicable to condominiums, cooperatives, and homeowners' associations (see Most new HOA laws an adaptation of condo regulations, August 2, 2007; Detailed architectural guidelines favored, September 6 2007; Legislation affects requirements for consent of mortgage holder, October 4, 2007 and S.B. 902 addresses architectural control, reserve funding, November 1, 2007). Today, we will focus on Senate Bill 1844, which implemented some significant changes in the law regarding collection of delinquent assessments by homeowners' associations.

Prior to the adoption of S.B. 1844, the law for homeowners' associations generally deferred to the provisions of the governing documents regarding the collection of delinquent assessments. Now, like condominiums, the law for HOAs contains a number of specific provisions that are applicable to assessment collections in all homeowners' associations:

- **Joint and Several Liability:** The new law provides that a parcel owner is liable for all assessments on a parcel, and 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 change in the law, at its most basic level, codifies the provisions of most declarations of covenants regarding the liability for a predecessor's assessment obligations. However, perhaps even going a step further than the condominium statute, the new law suggests that a foreclosing mortgagee would also become liable for unpaid assessments. The retroactive application of this law to existing associations, where the governing documents may provide relief to mortgagees, will undoubtedly be tested in the courts.

- **Late Fees and Interest:** Like the condominium law, the new laws for homeowners' associations stipulates that unpaid assessments bear interest at the rate specified in the declaration of covenants or bylaws, and if the documents are silent, at the rate of eighteen percent per annum. Further, if so provided in the declaration or bylaws, the HOA may also impose a late fee of twenty-five dollars for each delinquent installment, or five percent of the installment amount, whichever is greater.

- **Application of Payments:** S.B. 1844 imports the presumption from the condominium laws regarding how payments made on delinquent accounts are to be applied to the account. Under the new law, payments on delinquent assessments are applied to interest, late fees, and attorney's fees incurred in connection with collection, and then to the principal due.
- **Prohibition Against "Restrictive Endorsements":** The new law provides that notwithstanding any "restrictive endorsement" on a check made in payment of assessment obligations (such as "paid in full"), the association does not waive the ability to collect all outstanding assessments (plus interest, late fees and attorney's fees) by acceptance of the check.
- **Pre-Lien Notice:** Unlike the condominium law, the new law for homeowners' associations requires that, before an association can file a lien against the parcel for unpaid assessments, the parcel owner must be given written notice of delinquency and an opportunity to bring the account current. Forty-five days notice must be given. The pre-lien notice may include attorney's fees incurred in connection with the notice, interest and late fees.
- **Forty-Five Day "Cooling Off" Period:** After a lien has been filed, a homeowners' association may not file a lawsuit to foreclose the claim of lien unless the parcel

owner has been given forty-five days written notice of the association's intent to institute a foreclosure proceeding. This is similar to the requirement of the condominium law, but the law for condos only imposes a thirty-day requirement.

- **Parcel Owner Right to Submit a "Qualifying Offer" During Foreclosure Proceedings:** In an apparent effort to provide relief to association members who may be facing economic problems, the new law permits the parcel owner to make a "qualifying offer", one time, during the pendency of a foreclosure action. When a "qualifying offer" is made, any pending foreclosure action is stayed for a period not to exceed sixty days. If the parcel owner makes payment in full during the "qualifying offer" period, no further proceedings to foreclose the lien may take place.

The adoption of SB 1844 comes at a time of unprecedented foreclosures of mortgages and community association assessment liens. In my view, the new law strikes a relatively good balance between the rights of associations to collect and parcel owners who might be subjected to abusive collection tactics. There are some "glitches" in the law, which I am told may be addressed during the 2008 session of the Florida Legislature.

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