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ATTORNEYS

EARL DRAYTON FARR, JR.
(Senior Counsel)

GUY S. EMERICH

JACK O. HACKETT II

MICHAEL P. HAYMANS

CHARLES T. BOYLE

DAROL H.M. CARR

DAVID A. HOLMES

GARY A. KAHLE

JENNIFER R. HOWELL

ROGER H. MILLER III

DOROTHY L. KORSZEN

WILL W. SUNTER

ERIC M. DECKER

HOMEOWNERS' ASSOCIATION UPDATE

Gary A. Kahle
January, 2008



Chapter 720 of the Florida Statutes which regulates the operation of homeowners' associations has been amended by adding new Section 720.3085. The most critical aspect of the amendment to a prospective purchaser of property in a community governed by a homeowners' association is that it makes every parcel owner, including a parcel owner who acquired title in a mortgage foreclosure action, jointly and severally liable with the previous parcel owner for all unpaid association assessments that came due prior to the time of the transfer of title. The homeowners' association may record a lien for unpaid assessments and foreclose the lien in the same manner that a mortgage on real property may be foreclosed. The association may also bring an action to recover money judgment for the unpaid assessments without waiving its claim of lien.

Assessments bear interest at 18% per year from their due date, unless the association documents provide for a lesser rate. The association may also charge a late fee not to exceed the greater of \$25.00 or 5% of the amount of each past due installment.

Before recording a lien or bringing legal action the association must provide the parcel owner with a written demand for payment allowing the owner forty-five (45) days to pay all amounts due, including interest, late fees, and any attorney's fees or other costs incurred by the association for preparation and delivery of the demand.

The association may recover its reasonable attorney's fees incurred in a lien foreclosure action or in an action to recover a money judgment and may purchase the parcel at a foreclosure sale and thereafter hold, lease, mortgage or convey the parcel.



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The parcel owner may file a “qualifying offer” at any time prior to the entry of the final judgment of foreclosure. A “qualifying offer” is an offer to pay all amounts due to the association and has the effect of staying the foreclosure action for a maximum of sixty (60) days during which the parcel owner may pay to the association all amounts due, including interest accruing during the offer period.

New Section 720.303(5) permits the association to charge a fee not to exceed \$150.00, plus the reasonable cost of photocopying and any attorney’s fees incurred by the association in responding to a prospective purchaser’s request for information.

Punta Gorda Office:
99 Nesbit Street
Punta Gorda, FL 33950
Phone: 941.639.1158
Fax: 941.639.0028

Englewood Office:
33 S. Indiana Avenue
Englewood, FL 34223
Phone: 941.460.9334
Fax: 941.460.9443

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