

By Senator Lee

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1 A bill to be entitled
2 An act relating to residential communities; amending
3 s. 468.431, F.S.; revising the term "community
4 association management"; amending s. 718.116, F.S.;
5 authorizing a claim of lien on a condominium parcel to
6 be in a specific form; authorizing a release of lien
7 to be in a specific form; amending s. 719.108, F.S.;
8 deleting a provision providing for the expiration of
9 certain liens; revising notice requirements;
10 authorizing a claim of lien on a cooperative parcel to
11 be in a specific form; providing for the content of a
12 recording notice; authorizing a release of lien to be
13 in a specific form; amending s. 720.3085, F.S.;
14 authorizing a claim of lien on a parcel within a
15 homeowners' association to be in a specific form;
16 authorizing a release of lien to be in a specific
17 form; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsection (2) of section 468.431, Florida
22 Statutes, is amended to read:

23 468.431 Definitions.—As used in this part:

24 (2) "Community association management" means any of the
25 following practices requiring substantial specialized knowledge,
26 judgment, and managerial skill when done for remuneration and
27 when the association or associations served contain more than 10
28 units or have an annual budget or budgets in excess of \$100,000:
29 controlling or disbursing funds of a community association,

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30 preparing budgets or other financial documents for a community
31 association, assisting in the noticing or conduct of community
32 association meetings, determining the number of days required
33 for statutory notices, determining amounts due to the
34 association, collecting amounts due to the association before
35 filing of a civil action, calculating the votes required for a
36 quorum or to approve a proposition or amendment, completing
37 forms related to the management of a community association that
38 have been created by statute or by a state agency, drafting
39 demand letters, pre lien letters, and letters of intended
40 action, drafting meeting notices and agendas, calculating and
41 preparing certificates of assessments, responding to requests
42 for an estoppel letter, negotiating monetary or performance
43 terms of a contract subject to approval by an association,
44 drafting prearbitration demands, preparing statutory
45 construction lien documents for association projects,
46 coordinating or performing maintenance for real or personal
47 property and other routine services involved in the operation of
48 a community association, and complying with the association's
49 governing documents and the requirements of law as necessary to
50 perform such practices ~~and coordinating maintenance for the~~
51 ~~residential development and other day-to-day services involved~~
52 ~~with the operation of a community association.~~ A person who
53 performs clerical or ministerial functions under the direct
54 supervision and control of a licensed manager or who is charged
55 only with performing the maintenance of a community association
56 and who does not assist in any of the management services
57 described in this subsection is not required to be licensed
58 under this part.

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59 Section 2. Subsection (5) of section 718.116, Florida
 60 Statutes, is amended to read:

61 718.116 Assessments; liability; lien and priority;
 62 interest; collection.-

63 (5) (a) The association has a lien on each condominium
 64 parcel to secure the payment of assessments. Except as otherwise
 65 provided in subsection (1) and as set forth below, the lien is
 66 effective from and shall relate back to the recording of the
 67 original declaration of condominium, or, in the case of lien on
 68 a parcel located in a phase condominium, the last to occur of
 69 the recording of the original declaration or amendment thereto
 70 creating the parcel. However, as to first mortgages of record,
 71 the lien is effective from and after recording of a claim of
 72 lien in the public records of the county in which the
 73 condominium parcel is located. Nothing in this subsection shall
 74 be construed to bestow upon any lien, mortgage, or certified
 75 judgment of record on April 1, 1992, including the lien for
 76 unpaid assessments created herein, a priority which, by law, the
 77 lien, mortgage, or judgment did not have before that date.

78 (b) ~~To be valid,~~ A claim of lien may be in substantially
 79 the following form:

81 CLAIM OF LIEN

82
 83 Before me, the undersigned notary public, personally appeared
 84 ...(name)..., who was duly sworn and says that he/she is the
 85 authorized agent of the lienor, ...(name of association)...,
 86 whose address is ...(address)..., and that in accordance with
 87 the Condominium Act and the declaration of ...(name of

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88 association)..., a condominium, and the articles of
 89 incorporation and bylaws of the association, the association
 90 makes this claim of lien for ...(basis for claim of lien)...,
 91 for the following described real property:

92
 93 UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A
 94 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
 95 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
 96 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
 97 BOOK, PAGE, OF THE PUBLIC RECORDS OF
 98 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT
 99 IS NOT LIMITED TO, ALL APPURTENANCES TO THE
 100 CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE
 101 UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID
 102 CONDOMINIUM.

103
 104 upon which the association asserts this lien. The property is
 105 owned by ...(name of debtor)..., Debtor. There remains unpaid to
 106 the association, the sum of \$..... This lien secures these
 107 amounts, as well as any unpaid assessments and monetary
 108 obligations, interest thereon, and costs of collection that may
 109 accrue in the future.

110
 111 ...(signature of witness)... ...(signature of authorized
 112 agent)...

113
 114 ...(signature of witness)...

115
 116 Sworn to ...(or affirmed)... and subscribed before me this

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117 day of, ...(year)..., by ...(name of person making
118 statement)...
119 ...(Signature of Notary Public)...
120 ...(Print, type, or stamp commissioned name of Notary Public)...
121 Personally Known.... OR Produced.... as identification.

122
123 ~~must state the description of the condominium parcel, the name~~
124 ~~of the record owner, the name and address of the association,~~
125 ~~the amount due, and the due dates.~~ It must be executed and
126 acknowledged by an officer or authorized agent of the
127 association. The lien is not effective 1 year after the claim of
128 lien was recorded unless, within that time, an action to enforce
129 the lien is commenced. The 1-year period is automatically
130 extended for any length of time during which the association is
131 prevented from filing a foreclosure action by an automatic stay
132 resulting from a bankruptcy petition filed by the parcel owner
133 or any other person claiming an interest in the parcel. The
134 claim of lien secures all unpaid assessments that are due and
135 that may accrue after the claim of lien is recorded and through
136 the entry of a final judgment, as well as interest and all
137 reasonable costs and attorney's fees incurred by the association
138 incident to the collection process. Upon payment in full, the
139 person making the payment is entitled to a satisfaction of the
140 lien.

141 (c) By recording a notice in substantially the following
142 form, a unit owner or the unit owner's agent or attorney may
143 require the association to enforce a recorded claim of lien
144 against his or her condominium parcel:

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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 from the date of service of this notice. Executed this day of, ...(year)....

Signed: ...(Owner or Attorney)...

After notice of 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 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 during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien may be in substantially the following form:

RELEASE OF LIEN

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The undersigned lienor, in consideration of the final payment in the amount of \$...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through, ...(year)..., for the following described real property:

UNIT NO. OF ...(NAME OF CONDOMINIUM)..., A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

...(signature of witness)... (signature of authorized agent)...

...(signature of witness)...

Sworn to ...(or affirmed)... and subscribed before me this day of, ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Personally Known.... OR Produced.... as identification.

Section 3. Subsection (4) of section 719.108, Florida

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204 Statutes, is amended to read:

205 719.108 Rents and assessments; liability; lien and
206 priority; interest; collection; cooperative ownership.—

207 (4) The association has a lien on each cooperative parcel
208 for any unpaid rents and assessments, plus interest, and any
209 authorized administrative late fees. If authorized by the
210 cooperative documents, the lien also secures reasonable
211 attorney's fees incurred by the association incident to the
212 collection of the rents and assessments or enforcement of such
213 lien. The lien is effective from and after recording a claim of
214 lien in the public records in the county in which the
215 cooperative parcel is located which states the description of
216 the cooperative parcel, the name of the unit owner, the amount
217 due, and the due dates. ~~The lien expires if a claim of lien is
218 not filed within 1 year after the date the assessment was due,
219 and the lien does not continue for longer than 1 year after the
220 claim of lien has been recorded unless, within that time, an
221 action to enforce the lien is commenced.~~ Except as otherwise
222 provided in this chapter, a lien may not be filed by the
223 association against a cooperative parcel until 30 days after the
224 date on which a notice of intent to file a lien has been
225 delivered to the owner.

226 (a) The notice must be sent to the unit owner at the
227 address of the unit by first-class United States mail and:

228 1. If the most recent address of the unit owner on the
229 records of the association is the address of the unit, the
230 notice must be sent by ~~registered or~~ certified mail, return
231 receipt requested, to the unit owner at the address of the unit.

232 2. If the most recent address of the unit owner on the

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233 records of the association is in the United States, but is not
 234 the address of the unit, the notice must be sent by ~~registered~~
 235 ~~or~~ certified mail, return receipt requested, to the unit owner
 236 at his or her most recent address.

237 3. If the most recent address of the unit owner on the
 238 records of the association is not in the United States, the
 239 notice must be sent by first-class United States mail to the
 240 unit owner at his or her most recent address.

241 ~~(b)~~

242 A notice that is sent pursuant to this paragraph ~~subsection~~ is
 243 deemed delivered upon mailing.

244 (b) A claim of lien may be in substantially the following
 245 form:

246

247 CLAIM OF LIEN

248

249 Before me, the undersigned notary public, personally appeared
 250 ...(name)... who was duly sworn and says that he/she is the
 251 authorized agent of the lienor, ...(name of association)...,
 252 whose address is ...(address)..., and that in accordance with
 253 the Cooperative Act and the cooperative documents of ...(name of
 254 association)..., a cooperative, and the articles of
 255 incorporation and bylaws of the association, the association
 256 makes this claim of lien for ...(basis for claim of lien)...,
 257 for the following described real property:

258

259 UNIT NO. OF ...(NAME OF COOPERATIVE)... , A
 260 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
 261 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART

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262 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 263, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 264 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
 265 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
 266 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
 267 COMMON ELEMENTS OF SAID COOPERATIVE.

268
 269 Upon which the association asserts this lien. The property is
 270 owned by . . . (name of debtor) . . ., Debtor. There remains unpaid to
 271 the association, the sum of \$ This lien secures these
 272 amounts, as well as any unpaid rents, assessments, and monetary
 273 obligations, interest thereon, and costs of collection that may
 274 accrue in the future.

275
 276 . . . (signature of witness) (signature of authorized
 277 agent) . . .

278
 279 . . . (signature of witness) . . .

280
 281 Sworn to . . . (or affirmed) . . . and subscribed before me this
 282 day of, . . . (year) . . ., by . . . (name of person making
 283 statement)

284 . . . (Signature of Notary Public) . . .

285 . . . (Print, type, or stamp commissioned name of Notary Public) . . .

286 Personally Known OR Produced as identification.

287
 288 The claim must be executed and acknowledged by an officer or
 289 authorized agent of the association. The lien is not effective 1
 290 year after the claim of lien was recorded unless, within that

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291 time, an action to enforce the lien is commenced. The 1-year
 292 period is automatically extended for any length of time during
 293 which the association is prevented from filing a foreclosure
 294 action by an automatic stay resulting from a bankruptcy petition
 295 filed by the parcel owner or any other person claiming an
 296 interest in the parcel. The claim of lien secures all unpaid
 297 rents and assessments that are due and that may accrue after the
 298 claim of lien is recorded and through the entry of a final
 299 judgment, as well as interest and all reasonable costs and
 300 attorney's fees incurred by the association incident to the
 301 collection process. Upon payment in full, the person making the
 302 payment is entitled to a satisfaction of the lien.

303 (c) By recording a notice in substantially the following
 304 form, a unit owner or the unit owner's agent or attorney may
 305 require the association to enforce a recorded claim of lien
 306 against his or her cooperative parcel:

307
 308 NOTICE OF CONTEST OF LIEN

309
 310 TO: ... (Name and address of association) ... You are
 311 notified that the undersigned contests the claim of lien filed
 312 by you on, ... (year) ..., and recorded in Official Records
 313 Book at Page, of the public records of County,
 314 Florida, and that the time within which you may file suit to
 315 enforce your lien is limited to 90 days from the date of service
 316 of this notice. Executed this day of, ... (year)
 317 Signed: ... (Owner or Attorney) ...

318
 319 After notice of contest of lien has been recorded, the clerk of

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320 the circuit court shall mail a copy of the recorded notice to
 321 the association by certified mail, return receipt requested, at
 322 the address shown in the claim of lien or most recent amendment
 323 to it and shall certify to the service on the face of the
 324 notice. Service is complete upon mailing. After service, the
 325 association has 90 days in which to file an action to enforce
 326 the lien; and, if the action is not filed within the 90-day
 327 period, the lien is void. However, the 90-day period shall be
 328 extended for any length of time during which the association is
 329 prevented from filing its action because of an automatic stay
 330 resulting from the filing of a bankruptcy petition by the unit
 331 owner or by any other person claiming an interest in the parcel.

332 (d) A release of lien may be in substantially the following
 333 form:

334
 335 RELEASE OF LIEN

336
 337 The undersigned lienor, in consideration of the final payment in
 338 the amount of \$...., hereby waives and releases its lien and
 339 right to claim a lien for unpaid assessments through,
 340 ...(year)..., for the following described real property:

341
 342 UNIT NO. OF ... (NAME OF COOPERATIVE) ..., A
 343 COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS
 344 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 345 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 346, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 347 THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO,
 348 ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE

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349 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE
 350 COMMON ELEMENTS OF SAID COOPERATIVE.

351
 352 ...(signature of witness)... ...(signature of authorized
 353 agent...)

354
 355 ...(signature of witness)...

356
 357 Sworn to ...(or affirmed)... and subscribed before me this
 358 day of, ...(year)..., by ...(name of person making
 359 statement)....

360 ...(Signature of Notary Public)...

361 ...(Print, type, or stamp commissioned name of Notary Public)...

362 Personally Known.... OR Produced.... as identification.

363 Section 4. Subsection (1) of section 720.3085, Florida
 364 Statutes, is amended to read:

365 720.3085 Payment for assessments; lien claims.—

366 (1) When authorized by the governing documents, the
 367 association has a lien on each parcel to secure the payment of
 368 assessments and other amounts provided for by this section.
 369 Except as otherwise set forth in this section, the lien is
 370 effective from and shall relate back to the date on which the
 371 original declaration of the community was recorded. However, as
 372 to first mortgages of record, the lien is effective from and
 373 after recording of a claim of lien in the public records of the
 374 county in which the parcel is located. This subsection does not
 375 bestow upon any lien, mortgage, or certified judgment of record
 376 on July 1, 2008, including the lien for unpaid assessments
 377 created in this section, a priority that, by law, the lien,

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378 mortgage, or judgment did not have before July 1, 2008.

379 (a) ~~To be valid,~~ A claim of lien may be in substantially
 380 the following form:

381
 382 CLAIM OF LIEN

383
 384 Before me, the undersigned notary public, personally appeared
 385 ...(name)... who was duly sworn and says that he/she is the
 386 authorized agent of the lienor, ...(name of association)...,
 387 whose address is ...(address)..., and that in accordance with
 388 the Florida Statutes and the homeowners' association documents
 389 of ...(name of association)..., a homeowners' association, and
 390 the articles of incorporation and bylaws of the association, the
 391 association makes this claim of lien for ...(basis for claim of
 392 lien)..., for the following described real property:

393
 394 (PARCEL NO. OR LOT AND BLOCK) OF ...(NAME OF
 395 HOMEOWNERS' ASSOCIATION)..., A HOMEOWNERS' ASSOCIATION
 396 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
 397 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 398 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 399, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

400
 401 ...(or insert appropriate metes and bounds description
 402 here)...

403
 404 upon which the association asserts this lien. The property is
 405 owned by ...(name of debtor)..., Debtor. There remains unpaid to
 406 the association, the sum of \$..... This lien secures these

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407 amounts, as well as any unpaid assessments and monetary
 408 obligations, interest thereon, and costs of collection that may
 409 accrue in the future.

411 ...(Signature of witness)... ...(Signature of authorized
 412 agent)...

414 ...(Signature of witness)...

416 Sworn to ...(or affirmed)... and subscribed before me this
 417 day of, ...(year)..., by ...(name of person making
 418 statement)....

419 ...(Signature of Notary Public)...

420(Print, type, or stamp commissioned name of Notary
 421 Public)...

422 Personally Known.... OR Produced.... as identification.

424 ~~must state the description of the parcel, the name of the record~~
 425 ~~owner, the name and address of the association, the assessment~~
 426 ~~amount due, and the due date. The claim of lien secures all~~
 427 ~~unpaid assessments that are due and that may accrue subsequent~~
 428 ~~to the recording of the claim of lien and before entry of a~~
 429 ~~certificate of title, as well as interest, late charges, and~~
 430 ~~reasonable costs and attorney's fees incurred by the association~~
 431 ~~incident to the collection process. The person making payment is~~
 432 ~~entitled to a satisfaction of the lien upon payment in full.~~

433 (b) By recording a notice in substantially the following
 434 form, a parcel owner or the parcel owner's agent or attorney may
 435 require the association to enforce a recorded claim of lien

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436 against his or her parcel:

437 NOTICE OF CONTEST OF LIEN

438 TO: ...(Name and address of association)...

439 You are notified that the undersigned contests the claim of lien
440 filed by you on, ...(year)..., and recorded in Official
441 Records Book at page, of the public records of
442 County, Florida, and that the time within which you may file
443 suit to enforce your lien is limited to 90 days following the
444 date of service of this notice. Executed this day of,
445 ...(year)....

446 Signed: ...(Owner or Attorney)...

447 After the notice of a contest of lien has been recorded, the
448 clerk of the circuit court shall mail a copy of the recorded
449 notice to the association by certified mail, return receipt
450 requested, at the address shown in the claim of lien or the most
451 recent amendment to it and shall certify to the service on the
452 face of the notice. Service is complete upon mailing. After
453 service, the association has 90 days in which to file an action
454 to enforce the lien and, if the action is not filed within the
455 90-day period, the lien is void. However, the 90-day period
456 shall be extended for any length of time that the association is
457 prevented from filing its action because of an automatic stay
458 resulting from the filing of a bankruptcy petition by the parcel
459 owner or by any other person claiming an interest in the parcel.

460 (c) The association may bring an action in its name to
461 foreclose a lien for assessments in the same manner in which a
462 mortgage of real property is foreclosed and may also bring an
463 action to recover a money judgment for the unpaid assessments
464 without waiving any claim of lien. The association is entitled

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465 to recover its reasonable attorney's fees incurred in an action
 466 to foreclose a lien or an action to recover a money judgment for
 467 unpaid assessments.

468 (d) A release of lien may be in substantially the following
 469 form:

471 RELEASE OF LIEN

472
 473 The undersigned lienor, in consideration of the final payment in
 474 the amount of \$...., hereby waives and releases its lien and
 475 right to claim a lien for unpaid assessments through,
 476 ...(year)..., for the following described real property:

477
 478 (PARCEL NO. OR LOT AND BLOCK) OF ...(NAME OF
 479 HOMEOWNERS' ASSOCIATION)..., A HOMEOWNERS' ASSOCIATION
 480 AS SET FORTH IN THE HOMEOWNERS' ASSOCIATION DOCUMENTS
 481 AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART
 482 THEREOF, RECORDED IN OFFICIAL RECORDS BOOK, PAGE
 483, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

484
 485 ...(or insert appropriate metes and bounds description
 486 here)...

487
 488 ...(Signature of witness)... ...(Signature of authorized
 489 agent)...

490
 491 ...(Signature of witness)...

492
 493 Sworn to ...(or affirmed)... and subscribed before me this

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494 day of, ...(year)..., by ...(name of person making
495 statement)....
496 ...(Signature of Notary Public)...
497 ...(Print, type, or stamp commissioned name of Notary Public)...
498 Personally Known.... OR Produced.... as identification.
499

500 (e)~~(d)~~ If the parcel owner remains in possession of the
501 parcel after a foreclosure judgment has been entered, the court
502 may require the parcel owner to pay a reasonable rent for the
503 parcel. If the parcel is rented or leased during the pendency of
504 the foreclosure action, the association is entitled to the
505 appointment of a receiver to collect the rent. The expenses of
506 the receiver must be paid by the party who does not prevail in
507 the foreclosure action.

508 (f)~~(e)~~ The association may purchase the parcel at the
509 foreclosure sale and hold, lease, mortgage, or convey the
510 parcel.

511 Section 5. This act shall take effect July 1, 2014.