

1 A bill to be entitled
 2 An act relating to residential communities; amending
 3 s. 468.431, F.S.; adding duties to the definition of
 4 community association management; amending s. 718.116,
 5 F.S.; creating a form for a condominium lien; creating
 6 a form for a release of lien; amending s. 719.108,
 7 F.S.; creating a form for a cooperative lien; creating
 8 a form for a release of lien; amending s. 720.3085,
 9 F.S.; creating a form for a homeowners' association
 10 lien; creating a form for a release of lien; providing
 11 an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (2) of section 468.431, Florida
 16 Statutes, is amended to read:

17 468.431 Definitions.—As used in this part:

18 (2) "Community association management" means any of the
 19 following practices requiring substantial specialized knowledge,
 20 judgment, and managerial skill when done for remuneration and
 21 when the association or associations served contain more than 10
 22 units or have an annual budget or budgets in excess of \$100,000:
 23 controlling or disbursing funds of a community association,
 24 preparing budgets or other financial documents for a community
 25 association, assisting in the noticing or conduct of community
 26 association meetings, determining the number of days required

27 for statutory notices, determining amounts due the association,
 28 calculating the votes required for a quorum or to approve a
 29 proposition or amendment, completing forms related to the
 30 management of a community association that have been created by
 31 statute or by a state agency, drafting demand letters, drafting
 32 meeting notices and agendas, calculating certificates of
 33 assessments, responding to requests for an estoppel letter,
 34 negotiating monetary or performance terms of a contract subject
 35 to approval by an association, and coordinating maintenance for
 36 the residential development and other day-to-day services
 37 involved with the operation of a community association. A person
 38 who performs clerical or ministerial functions under the direct
 39 supervision and control of a licensed manager or who is charged
 40 only with performing the maintenance of a community association
 41 and who does not assist in any of the management services
 42 described in this subsection is not required to be licensed
 43 under this part.

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

46 718.116 Assessments; liability; lien and priority;
 47 interest; collection.—

48 (5) (a) The association has a lien on each condominium
 49 parcel to secure the payment of assessments. Except as otherwise
 50 provided in subsection (1) and as set forth below, the lien is
 51 effective from and shall relate back to the recording of the
 52 original declaration of condominium, or, in the case of lien on

53 a parcel located in a phase condominium, the last to occur of
 54 the recording of the original declaration or amendment thereto
 55 creating the parcel. However, as to first mortgages of record,
 56 the lien is effective from and after recording of a claim of
 57 lien in the public records of the county in which the
 58 condominium parcel is located. Nothing in this subsection shall
 59 be construed to bestow upon any lien, mortgage, or certified
 60 judgment of record on April 1, 1992, including the lien for
 61 unpaid assessments created herein, a priority which, by law, the
 62 lien, mortgage, or judgment did not have before that date.

63 (b) ~~To be valid,~~ A claim of lien may be in substantially
 64 the following form: ~~must~~

65
 66 CLAIM OF LIEN

67
 68 BEFORE ME, the undersigned notary public, personally appeared
 69 (insert name) who was duly sworn and says that he is the
 70 authorized agent of the lienor, (insert name of association)
 71 , whose address is (insert address) , and that in
 72 accordance with the Condominium Act and the Declaration of
 73 (insert name of association) , a Condominium, and the
 74 Articles of Incorporation and Bylaws of the Association, the
 75 Association makes this claim of lien for (insert basis for
 76 claim of lien) , for the following described real property:

77
 78 UNIT NO. OF (NAME OF CONDOMINIUM) , A

79 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF
 80 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
 81 FORMING A PART THEREOF, RECORDED IN OFFICIAL
 82 RECORDS BOOK _____, PAGE _____, OF THE PUBLIC
 83 RECORDS OF _____ COUNTY, FLORIDA. THE ABOVE
 84 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
 85 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE
 86 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN
 87 THE COMMON ELEMENTS OF SAID CONDOMINIUM.

88
 89 upon which the Association asserts this lien. The property is
 90 owned by _____ (insert name of debtor) _____, Debtor. There remains
 91 unpaid to the association, the sum of \$ _____ . This lien
 92 secures these amounts, as well as any amounts and assessments
 93 and interest that may accrue in the future.

94
 95 (signature of witness) _____ (signature of authorized agent)
 96 (signature of witness) _____

97
 98 (insert notary clause as appropriate)

99
 100 ~~state the description of the condominium parcel, the name of the~~
 101 ~~record owner, the name and address of the association, the~~
 102 ~~amount due, and the due dates. It must be executed and~~
 103 ~~acknowledged by an officer or authorized agent of the~~
 104 ~~association. The lien is not effective 1 year after the claim of~~

105 | lien was recorded unless, within that time, an action to enforce
 106 | the lien is commenced. The 1-year period is automatically
 107 | extended for any length of time during which the association is
 108 | prevented from filing a foreclosure action by an automatic stay
 109 | resulting from a bankruptcy petition filed by the parcel owner
 110 | or any other person claiming an interest in the parcel. The
 111 | claim of lien secures all unpaid assessments that are due and
 112 | that may accrue after the claim of lien is recorded and through
 113 | the entry of a final judgment, as well as interest and all
 114 | reasonable costs and attorney's fees incurred by the association
 115 | incident to the collection process. Upon payment in full, the
 116 | person making the payment is entitled to a satisfaction of the
 117 | lien.

118 | (c) By recording a notice in substantially the following
 119 | form, a unit owner or the unit owner's agent or attorney may
 120 | require the association to enforce a recorded claim of lien
 121 | against his or her condominium parcel:

122 | NOTICE OF CONTEST OF LIEN

123 | TO: ... (Name and address of association)... You are
 124 | notified that the undersigned contests the claim of lien filed
 125 | by you on, ... (year) ..., and recorded in Official Records
 126 | Book at Page, of the public records of County,
 127 | Florida, and that the time within which you may file suit to
 128 | enforce your lien is limited to 90 days from the date of service
 129 | of this notice. Executed this day of, ... (year)....

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

131
 132 After notice of contest of lien has been recorded, the clerk of
 133 the circuit court shall mail a copy of the recorded notice to
 134 the association by certified mail, return receipt requested, at
 135 the address shown in the claim of lien or most recent amendment
 136 to it and shall certify to the service on the face of the
 137 notice. Service is complete upon mailing. After service, the
 138 association has 90 days in which to file an action to enforce
 139 the lien; and, if the action is not filed within the 90-day
 140 period, the lien is void. However, the 90-day period shall be
 141 extended for any length of time during which the association is
 142 prevented from filing its action because of an automatic stay
 143 resulting from the filing of a bankruptcy petition by the unit
 144 owner or by any other person claiming an interest in the parcel.

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

147
 148 RELEASE OF LIEN

149
 150 The undersigned lienor, in consideration of the final payment in
 151 the amount of \$ _____, hereby waives and releases its lien
 152 and right to claim a lien for unpaid assessments through
 153 (insert date) _____, for the following described real property:

154
 155 UNIT NO. _____ OF _____ (NAME OF CONDOMINIUM) _____, A
 156 CONDOMINIUM AS SET FORTH IN THE DECLARATION OF

157 CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND
 158 FORMING A PART THEREOF, RECORDED IN OFFICIAL
 159 RECORDS BOOK , PAGE , OF THE PUBLIC
 160 RECORDS OF COUNTY, FLORIDA. THE ABOVE
 161 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
 162 APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE
 163 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN
 164 THE COMMON ELEMENTS OF SAID CONDOMINIUM.

165
 166 (signature of witness) (signature of authorized agent)
 167 (signature of witness)
 168
 169 (insert notary clause as appropriate)
 170

171 Section 3. Subsection (4) of section 719.108, Florida
 172 Statutes, is amended to read:

173 719.108 Rents and assessments; liability; lien and
 174 priority; interest; collection; cooperative ownership.—

175 (4) The association has a lien on each cooperative parcel
 176 for any unpaid rents and assessments, plus interest, and any
 177 authorized administrative late fees. If authorized by the
 178 cooperative documents, the lien also secures reasonable
 179 attorney's fees incurred by the association incident to the
 180 collection of the rents and assessments or enforcement of such
 181 lien. The lien is effective from and after recording a claim of
 182 lien in the public records in the county in which the

183 cooperative parcel is located which states the description of
 184 the cooperative parcel, the name of the unit owner, the amount
 185 due, and the due dates. ~~The lien expires if a claim of lien is~~
 186 ~~not filed within 1 year after the date the assessment was due,~~
 187 ~~and the lien does not continue for longer than 1 year after the~~
 188 ~~claim of lien has been recorded unless, within that time, an~~
 189 ~~action to enforce the lien is commenced.~~ Except as otherwise
 190 provided in this chapter, a lien may not be filed by the
 191 association against a cooperative parcel until 30 days after the
 192 date on which a notice of intent to file a lien has been
 193 delivered to the owner.

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

196 1. If the most recent address of the unit owner on the
 197 records of the association is the address of the unit, the
 198 notice must be sent by ~~registered or~~ certified mail, return
 199 receipt requested, to the unit owner at the address of the unit.

200 2. If the most recent address of the unit owner on the
 201 records of the association is in the United States, but is not
 202 the address of the unit, the notice must be sent by ~~registered~~
 203 ~~or~~ certified mail, return receipt requested, to the unit owner
 204 at his or her most recent address.

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

209 ~~(b)~~ A notice that is sent pursuant to this paragraph
 210 ~~subsection~~ is deemed delivered upon mailing.

211 (b) A claim of lien may be in substantially the following
 212 form:

214 CLAIM OF LIEN

215
 216 BEFORE ME, the undersigned notary public, personally appeared
 217 (insert name) who was duly sworn and says that he is the
 218 authorized agent of the lienor, (insert name of association)
 219 , whose address is (insert address), and that in
 220 accordance with the Cooperative Act and the cooperative
 221 documents of (insert name of association), a
 222 Cooperative, and the Articles of Incorporation and Bylaws of the
 223 Association, the Association makes this claim of lien for
 224 (insert basis for claim of lien), for the following
 225 described real property:

226
 227 UNIT NO. OF (NAME OF COOPERATIVE), A COOPERATIVE AS
 228 SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED
 229 THERE TO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS
 230 BOOK, PAGE, OF THE PUBLIC RECORDS OF
 231 COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT
 232 LIMITED TO, ALL APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
 233 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON
 234 ELEMENTS OF SAID COOPERATIVE.

235
 236 Upon which the Association asserts this lien. The property is
 237 owned by (insert name of debtor) , Debtor. There remains
 238 unpaid to the association, the sum of \$. This lien
 239 secures these amounts, as well as any amounts and assessments
 240 and interest that may accrue in the future.

241
 242 (signature of witness) (signature of authorized agent)
 243 (signature of witness)

244
 245 (insert notary clause as appropriate)

246
 247 It must be executed and acknowledged by an officer or authorized
 248 agent of the association. The lien is not effective 1 year after
 249 the claim of lien was recorded unless, within that time, an
 250 action to enforce the lien is commenced. The 1-year period is
 251 automatically extended for any length of time during which the
 252 association is prevented from filing a foreclosure action by an
 253 automatic stay resulting from a bankruptcy petition filed by the
 254 parcel owner or any other person claiming an interest in the
 255 parcel. The claim of lien secures all unpaid rents and
 256 assessments that are due and that may accrue after the claim of
 257 lien is recorded and through the entry of a final judgment, as
 258 well as interest and all reasonable costs and attorney's fees
 259 incurred by the association incident to the collection process.
 260 Upon payment in full, the person making the payment is entitled

261 to a satisfaction of the lien.

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

266
 267 NOTICE OF CONTEST OF LIEN

268 TO: ...(Name and address of association)... You are
 269 notified that the undersigned contests the claim of lien filed
 270 by you on, ...(year)..., and recorded in Official Records
 271 Book at Page, of the public records of County,
 272 Florida, and that the time within which you may file suit to
 273 enforce your lien is limited to 90 days from the date of service
 274 of this notice. Executed this day of, ...(year)....
 275 Signed: ...(Owner or Attorney)...

276
 277 After notice of contest of lien has been recorded, the clerk of
 278 the circuit court shall mail a copy of the recorded notice to
 279 the association by certified mail, return receipt requested, at
 280 the address shown in the claim of lien or most recent amendment
 281 to it and shall certify to the service on the face of the
 282 notice. Service is complete upon mailing. After service, the
 283 association has 90 days in which to file an action to enforce
 284 the lien; and, if the action is not filed within the 90-day
 285 period, the lien is void. However, the 90-day period shall be
 286 extended for any length of time during which the association is

287 prevented from filing its action because of an automatic stay
288 resulting from the filing of a bankruptcy petition by the unit
289 owner or by any other person claiming an interest in the parcel.

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

292 RELEASE OF LIEN

293
294 The undersigned lienor, in consideration of the final payment in
295 the amount of \$ _____, hereby waives and releases its lien
296 and right to claim a lien for unpaid assessments through
297 (insert date) _____, for the following described real property:

298
299 UNIT NO. _____ OF _____ (NAME OF COOPERATIVE) _____, A
300 COOPERATIVE AS SET FORTH IN THE COOPERATIVE
301 DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND
302 FORMING A PART THEREOF, RECORDED IN OFFICIAL
303 RECORDS BOOK _____, PAGE _____, OF THE PUBLIC
304 RECORDS OF _____ COUNTY, FLORIDA. THE ABOVE
305 DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL
306 APPURTENANCES TO THE COOPERATIVE UNIT ABOVE
307 DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN
308 THE COMMON ELEMENTS OF SAID COOPERATIVE.

309
310 (signature of witness) _____ (signature of authorized agent) _____

311 (signature of witness) _____

312

313 (insert notary clause as appropriate)

314

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

317 720.3085 Payment for assessments; lien claims.—

318 (1) When authorized by the governing documents, the
 319 association has a lien on each parcel to secure the payment of
 320 assessments and other amounts provided for by this section.
 321 Except as otherwise set forth in this section, the lien is
 322 effective from and shall relate back to the date on which the
 323 original declaration of the community was recorded. However, as
 324 to first mortgages of record, the lien is effective from and
 325 after recording of a claim of lien in the public records of the
 326 county in which the parcel is located. This subsection does not
 327 bestow upon any lien, mortgage, or certified judgment of record
 328 on July 1, 2008, including the lien for unpaid assessments
 329 created in this section, a priority that, by law, the lien,
 330 mortgage, or judgment did not have before July 1, 2008.

331 (a) ~~To be valid,~~ A claim of lien may be in substantially
 332 the following form: ~~must~~

333

334 CLAIM OF LIEN

335

336 BEFORE ME, the undersigned notary public, personally appeared
 337 (insert name) who was duly sworn and says that he is the
 338 authorized agent of the lienor, (insert name of association)

339 , whose address is (insert address) , and that in
 340 accordance with the Florida Statutes and the homeowners'
 341 association documents of (insert name of association) , a
 342 homeowners' association, and the Articles of Incorporation and
 343 Bylaws of the Association, the Association makes this claim of
 344 lien for (insert basis for claim of lien) , for the
 345 following described real property:

346
 347 (PARCEL NO. OR LOT AND BLOCK) OF (NAME
 348 OF HOMEOWNERS' ASSOCIATION) , A HOMEOWNERS'
 349 ASSOCIATION AS SET FORTH IN THE HOMEOWNERS'
 350 ASSOCIATION DOCUMENTS AND THE EXHIBITS ANNEXED
 351 THERE TO AND FORMING A PART THEREOF, RECORDED IN
 352 OFFICIAL RECORDS BOOK , PAGE , OF THE
 353 PUBLIC RECORDS OF COUNTY, FLORIDA.

354
 355 (or insert appropriate metes and bounds
 356 description here)

357
 358 upon which the Association asserts this lien. The property is
 359 owned by (insert name of debtor) , Debtor. There remains
 360 unpaid to the association, the sum of \$. This lien
 361 secures these amounts, as well as any amounts and assessments
 362 and interest that may accrue in the future.

363
 364 (signature of witness) (signature of authorized agent)

365 (signature of witness)

366

367 (insert notary clause as appropriate)

368

369 ~~state the description of the parcel, the name of the record~~
 370 ~~owner, the name and address of the association, the assessment~~
 371 ~~amount due, and the due date.~~ The claim of lien secures all
 372 unpaid assessments that are due and that may accrue subsequent
 373 to the recording of the claim of lien and before entry of a
 374 certificate of title, as well as interest, late charges, and
 375 reasonable costs and attorney's fees incurred by the association
 376 incident to the collection process. The person making payment is
 377 entitled to a satisfaction of the lien upon payment in full.

378

379 (b) By recording a notice in substantially the following
 380 form, a parcel owner or the parcel owner's agent or attorney may
 381 require the association to enforce a recorded claim of lien
 382 against his or her parcel:

383 NOTICE OF CONTEST OF LIEN

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

385 You are notified that the undersigned contests the claim of lien
 386 filed by you on, ... (year) ..., and recorded in Official
 387 Records Book at page, of the public records of
 388 County, Florida, and that the time within which you may file
 389 suit to enforce your lien is limited to 90 days following the
 390 date of service of this notice. Executed this day of,

391 ... (year)....
 392 Signed: ... (Owner or Attorney) ...
 393 After the notice of a contest of lien has been recorded, the
 394 clerk of the circuit court shall mail a copy of the recorded
 395 notice to the association by certified mail, return receipt
 396 requested, at the address shown in the claim of lien or the most
 397 recent amendment to it and shall certify to the service on the
 398 face of the notice. Service is complete upon mailing. After
 399 service, the association has 90 days in which to file an action
 400 to enforce the lien and, if the action is not filed within the
 401 90-day period, the lien is void. However, the 90-day period
 402 shall be extended for any length of time that the association is
 403 prevented from filing its action because of an automatic stay
 404 resulting from the filing of a bankruptcy petition by the parcel
 405 owner or by any other person claiming an interest in the parcel.

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

408
 409 RELEASE OF LIEN

410
 411 The undersigned lienor, in consideration of the final payment in
 412 the amount of \$ _____, hereby waives and releases its lien
 413 and right to claim a lien for unpaid assessments through
 414 (insert date) _____, for the following described real property:

415
 416 (PARCEL NO. OR LOT AND BLOCK) _____ OF _____ (NAME

417 OF HOMEOWNERS' ASSOCIATION) , A HOMEOWNERS'
 418 ASSOCIATION AS SET FORTH IN THE HOMEOWNERS'
 419 ASSOCIATION DOCUMENTS AND THE EXHIBITS ANNEXED
 420 THERE TO AND FORMING A PART THEREOF, RECORDED IN
 421 OFFICIAL RECORDS BOOK , PAGE , OF THE
 422 PUBLIC RECORDS OF COUNTY, FLORIDA.

423
 424 (or insert appropriate metes and bounds
 425 description here)

426
 427 (signature of witness) (signature of authorized agent)
 428 (signature of witness)

429
 430 (insert notary clause as appropriate)

431
 432 (e)-(d) If the parcel owner remains in possession of the
 433 parcel after a foreclosure judgment has been entered, the court
 434 may require the parcel owner to pay a reasonable rent for the
 435 parcel. If the parcel is rented or leased during the pendency of
 436 the foreclosure action, the association is entitled to the
 437 appointment of a receiver to collect the rent. The expenses of
 438 the receiver must be paid by the party who does not prevail in
 439 the foreclosure action.

440 (f)-(e) The association may purchase the parcel at the
 441 foreclosure sale and hold, lease, mortgage, or convey the
 442 parcel.

PCB CJS 14-02

ORIGINAL

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

444