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BY DONNA GEHRKE-WHITE
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A new state law is making it harder for homeowner associations to foreclose on homes for delinquent dues.

But the new law comes at a price to struggling homeowners: It allows associations to collect interest on unpaid bills, a hefty 18 percent per year if the community's governing documents don't specify a rate. Previously, HOAs couldn't charge interest unless it was outlined in the documents.

Furthermore, the new law holds current owners responsible for unpaid dues, even if they were racked up by a previous owner.

Still, the law's sponsor, state Sen. Jeremy Ring, R-Margate, called it a "very strong consumer bill" that protects homeowners from abusive debt collection. The new law does not apply to condo associations.

The law requires HOAs to send at least two letters to warn delinquent owners of a lien or foreclosure suit if they don't pay up.

The associations must send one letter by first-class mail and another by either registered or certified mail, says attorney Donna Berger, who is executive director of the Community Advocacy Network (CAN), a statewide group for community associations.

This is to help ensure that homeowners receive the notice. In some cases, homeowner associations have claimed they mailed warnings but owners said they didn't get them. A few have told judges they learned about the foreclosure when their homes were sold on courthouse steps.

The new law also gives homeowners more time to pay than the federal and state fair debt collections laws, which require a 30-day notice before a debt collector files a lien or foreclosure, says attorney Gary A. Poliakoff, whose law firm, Becker & Poliakoff, represents about 4,500 community associations statewide.

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The new HOA law extends this 15 days. That means associations will have to wait at least 45 days from the date of the first warning letter to file a lien. If the money isn't paid, then they will have to hold off a minimum of another 45 days to begin foreclosure, attorney Berger says.

The extra time will help people save money, says state Rep. Julio Robaina, R-South Miami, who has led efforts to offer homeowners in associations more protection.

If they pay in time to avoid a lien, for example, they will avoid hefty legal fees and court costs that can add up to thousands of dollars, Robaina says.

The law also gives people 60 more days to repay if they submit a payment plan or "qualifying offer" in writing to the association, attorney Berger says.

"It gives them time to work things out," says state Rep. Franklin Sands, R-Weston, who introduced the bill in the House. "What it does not do is preclude them from meeting their obligations. Otherwise, other members of the association have to carry their dead weight."

If the owner doesn't make the payments, the association can go ahead with foreclosure.

MUST WAIT LONGER

The new law forces associations to wait longer for their money -- perhaps five months -- and that's if the homeowners come through with their promise to pay, Berger adds.

But, she notes, the legislation does help associations collect past-due fees of people who moved out without paying.

The new law requires current owners or a bank in a mortgage foreclosure case to pay what's owed to an HOA, even if they didn't ring up the debt. There is no limit on the number of years they can go back.

This provision worries Jan Bergemann, founder of the grass-roots consumer group Cyber Citizens for Justice.

"A buyer would be liable" even if a title company found no debt at the time the house was purchased, he says.

And, Bergemann wonders, how can a new owner confirm that the money is indeed owed, especially if the former owner cannot be found?

"This is definitely not a consumer bill," he says.

Bergemann also isn't impressed with a new law that will require homeowner associations to inform their members if they don't save for future big repairs.

If the association decides to collect reserves, the new law requires it to come up with a plan to pay for future repairs and bill people accordingly.

Bergemann thinks the new law is unenforceable and doesn't protect homeowners from boards mispending any reserves that they might collect.

"It's good to have reserves only if they are protected," he says.

But others believe the law is needed to inform homeowners that they might be liable for special assessments if no reserves are kept.

'WAKE-UP CALL'

"It's a wake-up call," says North Florida accountant Cecil "Pat" Patterson, who is on the board of governors for the Florida Institute of Certified Public Accountants, which lobbied for the law. "It's something that people need to be aware of."

Some homeowners may not know that their HOA is responsible for big-ticket items such as repaving roads, he says, adding, "All of a sudden, you get a \$5,000 bill [special assessment] out of the blue that you weren't expecting."

Still, the new law is relatively weak, just like the law that regulates reserves for condos. Owners in condo associations can vote to opt out of required reserves, which many do each year.

For homeowner's associations, the new law doesn't require reserves unless the developer mandated them -- which few did -- or if a majority of homeowners vote to have the accounts. The association members can change their mind about reserves every year, collecting them in some years and not in others.

Right now, most HOAs do not have reserves, says attorney Berger.

State leaders found that out when they discovered "I would say 90 percent of the associations didn't have reserves to offset the huge damage" inflicted during the 2004 and 2005 hurricane seasons, adds Fort Lauderdale attorney Poliakoff.

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