

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 542
Committee Substitute Favorable 4/26/23
Senate Judiciary Committee Substitute Adopted 6/27/23
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Short Title: HOA Revisions/Foreclosure Trustee Auctions.

(Public)

Sponsors:

Referred to:

April 3, 2023

A BILL TO BE ENTITLED
AN ACT TO AMEND LAWS GOVERNING THE CREATION AND ENFORCEMENT OF
LIENS SECURING AMOUNTS OWED TO UNIT OWNERS' ASSOCIATIONS AND
HOMEOWNERS' ASSOCIATIONS, TO STRENGTHEN REQUIRED NOTICE OF
DELINQUENT ASSESSMENTS GIVEN BY ASSOCIATIONS TO APPRISE OWNERS
OF THE DELINQUENCY AND POTENTIAL FILING OF A CLAIM OF LIEN, TO
REQUIRE ALL FINES COLLECTED BY AN ASSOCIATION TO BE REMITTED TO
THE CIVIL FINES AND FORFEITURES FUND, TO EXPAND OWNERS' ACCESS TO
HOA RECORDS, TO PROHIBIT ASSOCIATIONS FROM COMPENSATING A
MANAGING AGENT BASED ON THE AMOUNT OF FINES COLLECTED, TO
PROHIBIT ASSOCIATION REGULATION OF PARKING ON PUBLIC STREETS OR
ROADS, TO PROHIBIT ASSOCIATION ENFORCEMENT OF RESTRICTIONS ON
CERTAIN LESSONS GIVEN ON THE OWNER'S PROPERTY TO A GROUP OF FIVE
OR FEWER PERSONS, TO ALLOW CERTIFIED COPIES OF COURT-FILED
DOCUMENTS TO BE RECORDED WITHOUT MEETING CERTAIN CONFORMING
REQUIREMENTS OF THE REGISTER OF DEEDS, TO ALLOW FOR CERTAIN
FORECLOSURE SALES TO BE CONDUCTED AT DESIGNATED PUBLIC
LOCATIONS, TO EXPAND THE TIME ALLOWED FOR A SCHEDULED
FORECLOSURE SALE TO COMMENCE, AND TO ESTABLISH A PROCEDURE FOR
REMOTE BIDDING AT A FORECLOSURE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-102(a) reads as rewritten:

"§ 47C-3-102. Powers of unit owners' association.

(a) Unless the declaration expressly provides to the contrary, the association, even if
unincorporated, may do all of the following:

...

(3) Hire and terminate managing agents and other employees, agents, and
independent contractors. A contract between an association and a managing
agent shall not have a term exceeding one year and shall not contain an
automatic renewal provision that requires the association to give notice of
nonrenewal more than 30 days prior to the contract's anniversary date. Any
contract with a managing agent that is automatically renewed shall be
terminable by the association for any reason upon 60 days' notice. A managing
agent shall not be compensated in whole or in part based on the amount of



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1 finest collected by the managing agent on behalf of the association and shall
2 not collect from the association or a unit owner any fee in connection with its
3 collection of a fine imposed by the association.

4 ...

5 (6) Regulate the use, maintenance, repair, replacement, and modification of
6 common elements; provided, however, that in the absence of an
7 express authorization in the declaration, an association shall not enforce any
8 restriction on parking of a personal vehicle on a public street or public road
9 for which the North Carolina Department of Transportation or local
10 government has assumed responsibility for maintenance and repairs, unless
11 the authority to regulate such parking has been expressly delegated to the
12 association by the Department of Transportation or local government under
13 terms prescribing the manner in which the association may exercise that
14 authority. Any such delegation shall be valid for a period not to exceed five
15 years, at which time the association must reapply to the delegating entity. As
16 used in this subdivision, "personal vehicle" means an automobile with a gross
17 weight of less than 26,001 pounds that is used for personal pleasure, travel, or
18 commuting to and from a place of work, and does not include a motor home
19 or self-propelled recreational vehicle, or an automobile that is otherwise used
20 primarily in connection with any commercial endeavor or business.

21 ...

22 (11) Impose charges for late payment of assessments, not to exceed the greater of
23 twenty dollars (\$20.00) per month or ten percent (10%) of any assessment
24 installment unpaid and, after notice and an opportunity to be heard, suspend
25 privileges or services provided by the association (except rights of access to
26 lots) during any period that assessments or other amounts due and owing to
27 the association remain unpaid for a period of 30 days or longer, and levy
28 reasonable fines not to exceed one hundred dollars
29 (\$100.00)(G.S. 47C-3-107.1) for violations of the declaration, bylaws, and
30 rules and regulations of the association. No fine shall be levied for violation
31 of a provision restricting or prohibiting tutoring, educational lessons,
32 academic lessons, music lessons, or swimming lessons provided in the owner's
33 unit to a group of no more than five people at any one time, regardless of
34 whether compensation is received for such lessons.

35 ...

36 (12a) Impose reasonable charges in connection with the preparation of a lender's
37 questionnaire or certification or statements a statement of unpaid assessments,
38 which must be furnished within 10 business days after receipt of the request,
39 in an amount not to exceed two hundred dollars (\$200.00) per statement or
40 request, item requested, and an additional expedite-expedited fee in an amount
41 not to exceed one hundred dollars (\$100.00) if the item is requested to be
42 furnished less than 10 days after request is made within 48 hours of closing,
43 all of which receipt of the request. These charges may be collected by the
44 association, its managers, or its agents. Any charge for preparation of a
45 lender's questionnaire or certification shall be paid by the requesting party.
46 Neither the association nor its managing agent shall impose any charge upon
47 a unit owner or a prospective purchaser of a unit in connection with the
48 conveyance of a unit unless the charge is authorized in this subdivision.
49 Violation of this subdivision by an association or by its managing agent shall
50 constitute an unfair and deceptive trade practice under G.S. 75-1.1.

(12b) Impose a reasonable charge for providing copies of records requested by a member, not to exceed the actual cost of photocopying the records.

...

(14a) Exercise any authority granted to it under the declaration to approve or disapprove any proposed changes to a unit or limited common element. In exercising such authority, the association shall provide a fair, reasonable, and expeditious procedure for making its decision, which procedure shall be set forth in the association's governing documents. The procedures shall state the maximum time for issuance of any decision on a proposal or a request for reconsideration. At a minimum, a decision shall be made within 90 days after the initial submission of the proposal or submission of any additional information or changes to the proposal requested by the association in response to the initial submission. A decision shall be in writing, shall be made in good faith, and may not be unreasonable, arbitrary, or capricious. If the proposal is disapproved, the decision shall include both an explanation of why the proposal is disapproved and a description of the procedure for reconsideration of the decision by the executive board.

...."

SECTION 2. G.S. 47C-3-107.1 reads as rewritten:

"§ 47C-3-107.1. Procedures for fines and suspension of condominium privileges or services.

Unless a specific procedure for the imposition of fines or suspension of condominium privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. The unit owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. A written notice of hearing shall be sent to the unit owner as provided in G.S. 47C-3-116(e) not less than 10 days prior to the scheduled hearing date. The notice of hearing shall specify the date, time, and place of the hearing and shall include a general description of each alleged violation and the action, if any, to cure each alleged violation. The unit owner shall be given an opportunity to be heard and to present evidence at the hearing. A written notice of the decision specifying each violation verified by the evidence and the action, if any, to cure each verified violation shall be sent to the unit owner as provided in G.S. 47C-3-116(e). If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation ~~occurs~~ occurs, up to a maximum fine of two thousand five hundred dollars (\$2,500). Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. All fines collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund."

SECTION 3. G.S. 47C-3-116 reads as rewritten:

"§ 47C-3-116. Lien for sums due the association; enforcement.

(a) Any assessment attributable to a unit which remains unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided in this section. A claim of lien securing a debt consisting of fines or fine-related charges shall be

1 filed separately from a claim of lien securing other sums owed to the association and shall be
2 filed within 90 days after the date the fine was imposed. As used in this section, "fines or
3 fine-related charges" means fines imposed by the association, interest on unpaid fines, or
4 attorneys' fees incurred by the association related to fines imposed by the association. Once filed,
5 a claim of lien secures all sums due the association through the date filed and any sums due to
6 the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges
7 and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115
8 are subject to the ~~claim~~ claims of lien provided for under this section as well as any other sums
9 due and payable to the association under the declaration, the provisions of this Chapter, or as the
10 result of an arbitration, mediation, or judicial decision.

11 (b) The association must provide proper notice of delinquent assessments to the unit
12 owner before filing a claim of lien. The association must make reasonable and diligent efforts
13 ensure that its records contain the unit owner's current physical mailing address, ~~address and~~
14 current electronic mailing address. No fewer than 15 days prior to filing the lien, the association
15 shall ~~mail~~ do all of the following:

16 (1) Mail a statement of the assessment amount due by first class mail to the
17 physical address of the unit and the unit owner's address of record with the
18 association and, if different, to the address for the unit owner shown on the
19 county tax records for the unit. If the unit owner is a corporation or limited
20 liability company, the statement shall also be sent by first class mail to the
21 mailing address of the registered agent for the corporation or limited liability
22 company. Notwithstanding anything to the contrary in this Chapter, the
23 association is not required to mail a statement to an address known to be a
24 vacant unit or to a unit for which there is no United States postal address.

25 (2) Send a statement of the assessment amount due via electronic mail if the
26 owner has designated an email address as provided in G.S. 55A-1-70(b).

27 (c) A claim of lien shall set forth the name and address of the association, the name of
28 the record owner of the unit at the time the claim of lien is filed, a description of the unit, and the
29 amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure
30 as provided in subsection (f) of this section. The first page of the claim of lien shall contain the
31 following statement in print that is in boldface, capital letters, and no smaller than the largest
32 print used elsewhere in the document:

33 "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE
34 LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH
35 ~~FORECLOSURE ENFORCEMENT AGAINST YOU AND YOUR PROPERTY IN LIKE~~
36 ~~MANNER AS A MORTGAGE AS PERMITTED UNDER NORTH CAROLINA LAW."~~

37 The person signing the claim of lien on behalf of the association shall attach to and file with
38 the claim of lien a certificate of service attesting to the attempt of service on the record owner,
39 which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy
40 of a summons and a complaint. If the actual service is not achieved, the person signing the claim
41 of lien on behalf of the association shall be deemed to have met the requirements of this
42 subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule
43 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first class mail, postage prepaid
44 to the physical address of the unit and the unit owner's address of record with the association,
45 and, if different, to the address for the unit owner shown on the county tax records and the county
46 real property records for the unit. The association shall also send the owner a copy of the claim
47 of lien and certificate of service by email if the owner has designated an email address as provided
48 in G.S. 55A-1-70(b). In the event that the owner of record is not a natural person, and actual
49 service is not achieved, the person signing the claim of lien on behalf of the association shall be
50 deemed to have met the requirements of this subsection if service has been attempted once
51 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).

Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant unit or to a unit for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court. A lien securing a debt consisting of fines or fine-related charges is extinguished unless proceedings to enforce the lien are instituted within one year after the filing of the claim of lien in the office of the clerk of superior court.

(d) A claim of lien filed under this section is prior to all liens and encumbrances on a unit except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the unit, recorded before the filing of the claim of lien in the office of the clerk of superior court and (ii) liens for real estate taxes and other governmental assessments and charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(e) Attorneys' fees. –

(1) The association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums ~~due~~.due, except as otherwise provided in subdivision (2) of this subsection.

(2) In an action to enforce a claim of lien securing a debt consisting of fines or fine-related charges, upon findings by the court (i) that there was an unwarranted refusal by the unit owner to negotiate or pay the fines or fine-related charges and (ii) that the amount of damages recovered exceeded the highest offer made by the unit owner no later than 90 days before the commencement of trial, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the duly licensed attorneys representing the association obtaining a judgment for damages in said suit, in an amount not to exceed ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount recovered, whichever is greater, said attorneys' fees to be taxed as a part of the court costs. When making an award of attorneys' fees under this subdivision, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the debt secured by the claim of lien, and setting forth the amount of the highest offer made by the unit owner 90 days or more before the commencement of trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded.

(3) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the unit and the unit owner's address of record with the association and, if different, to the address for the unit owner shown on the county tax records for the unit. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant unit or a unit for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as

provided in subsection (i) of this section and shall provide the name and telephone number of the representative.

(f) Except as provided in subsection (h) of this section, the association, acting through the executive board, may foreclose a claim of lien securing a debt consisting of sums due the association other than fines or fine-related charges in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if the ~~assessment remains unpaid~~ delinquency has continued for ~~90-180~~ days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific unit. The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the General Statutes:

...

(5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the unit owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in ~~G.S. 45-21.16(c)(5a)~~ G.S. 45-21.16(c)(5) and G.S. 45-21.16(c)(5a) and shall specifically reference the unit owner's right of redemption provided under subdivision (8) of this subsection. The notice shall be sent by first-class mail to the physical address of the unit and the unit owner's address of record with the association and, if different, to the address for the unit owner shown on the county tax records for the unit.

(5a) The notice of hearing required pursuant to G.S. 45-21.16(a) shall be accompanied by the association's certification of the actions it has taken to give the owner notice of delinquent assessments in compliance with subsection (b) of this section.

(5b) At the commencement of the hearing, the clerk shall inquire as to whether the owner occupies the unit as his or her principal residence. If it appears that the owner does currently occupy the unit as a principal residence, the clerk shall further inquire as to the efforts the association has made to communicate with the owner and to attempt to resolve the matter voluntarily before the foreclosure proceeding. The clerk's inquiry shall not be required if the association has submitted, at or before the hearing, an affidavit briefly describing any efforts that have been made to resolve the default with the owner and the results of any such efforts.

(5c) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing, the clerk may consider (i) whether the association has offered the debtor an opportunity to resolve the foreclosure under a payment schedule pursuant to subsection (i) of this section, (ii) whether the association has engaged in actual responsive communication with the owner, including telephone conferences or in-person meetings with the owner or other actual two-party communications, (iii) whether the owner has indicated that he or she has the intent and ability to resolve the delinquency by making future payments under a payment plan, and (iv) whether the initiation or continuance of good-faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain not more than 90 days from the date

1 scheduled for the original hearing. Nothing in this part shall limit the authority
2 of the clerk to continue a hearing for other good cause shown.

3

4 (g) The provisions of subsection (f) of this section do not prohibit or prevent an
5 association from pursuing judicial foreclosure of a claim of ~~lien~~, lien securing a debt consisting
6 of sums due the association other than fines and fine-related charges, from taking other actions
7 to recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any
8 judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of
9 assessments shall include an award of costs and reasonable attorneys' fees for the prevailing
10 party, which shall not be subject to the limitation provided in subdivision (f)(12) of this section.

11 (h) A claim of lien securing a debt consisting ~~solely of fines imposed by the association,~~
12 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
13 ~~imposed by the association or fine-related charges~~ may only be enforced by judicial foreclosure,
14 ~~as provided in Article 29A of Chapter 1 of the General Statutes.~~ the filing of a civil action seeking
15 a judgment. In addition, an association shall not levy, charge, or attempt to collect a service,
16 collection, consulting, or administration fee from any unit owner unless the fee is expressly
17 allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees
18 may only be enforced by ~~judicial foreclosure, as provided in Article 29A of Chapter 1 of the~~
19 ~~General Statutes.~~ the filing of a civil action seeking a judgment. Liens arising as a result of the
20 entry of a judgment in favor of the association in any such civil action shall relate back and be
21 effective as of the date the claim of lien was filed.

22

23 **SECTION 4.** G.S. 47C-3-118 reads as rewritten:

24 **"§ 47C-3-118. Association records.**

25 ...

26 (a1) A unit owner or the unit owner's authorized agent is entitled to inspect and copy, at a
27 reasonable time and location specified by the association, any contract entered into by the
28 association authorizing a managing agent to exercise any of the powers granted to the association
29 pursuant to G.S. 47C-3-102, if the unit owner gives the association written notice of the demand
30 at least five business days before the date on which the unit owner wishes to inspect and copy
31 and the request satisfies the conditions for inspection set forth in G.S. 55A-16-02(c). A demand
32 to inspect made pursuant to this subsection shall be presumed to have been made in good faith
33 and for a proper purpose. In any action to compel the inspection and copying of documents, the
34 court may award reasonable attorneys' fees to the prevailing party. If the association does not
35 allow a unit owner who complies with this subsection to inspect and copy the requested contract,
36 and if a court of competent jurisdiction thereafter enters an order compelling the association to
37 do so, the court shall also order the association to pay the unit owner's costs, including reasonable
38 attorneys' fees, incurred to obtain the order.

39

40 **SECTION 5.** G.S. 47F-3-102 reads as rewritten:

41 **"§ 47F-3-102. Powers of owners' association.**

42 Unless the articles of incorporation or the declaration expressly provides to the contrary, the
43 association may do all of the following:

44 ...

45 (3) Hire and discharge managing agents and other employees, agents, and
46 independent contractors. A contract between an association and a managing
47 agent shall not have a term exceeding one year and shall not contain an
48 automatic renewal provision that requires the association to give notice of non
49 renewal more than 30 days prior to the contract's anniversary date. Any
50 contract with a managing agent that is automatically renewed shall be
51 terminable by the association for any reason upon 60 days' notice. A managing

agent shall not be compensated in whole or in part based on the amount of fines collected by the managing agent on behalf of the association and shall not collect from the association or a lot owner any fee in connection with its collection of a fine imposed by the association.

...

(6) Regulate the use, maintenance, repair, replacement, and modification of common ~~elements~~-elements; provided, however, that in the absence of an express authorization in the declaration, an association shall not enforce any restriction on parking of a personal vehicle on a public street or public road for which the North Carolina Department of Transportation or local government has assumed responsibility for maintenance and repairs, unless the authority to regulate such parking has been expressly delegated to the association by the Department of Transportation or local government under terms prescribing the manner in which the association may exercise that authority. Any such delegation shall be valid for a period not to exceed five years, at which time the association must reapply to the delegating entity. As used in this subdivision, "personal vehicle" means an automobile with a gross weight of less than 26,001 pounds that is used for personal pleasure, travel, or commuting to and from a place of work, and does not include a motor home or self-propelled recreational vehicle, or an automobile that is otherwise used primarily in connection with any commercial endeavor or business.

...

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association. No fine shall be levied for violation of a provision restricting or prohibiting tutoring, educational lessons, academic lessons, music lessons, or swimming lessons provided on the owner's lot to a group of no more than five people at any one time, regardless of whether compensation is received for such lessons.

...

(13a) Impose ~~reasonable~~-charges in connection with the preparation of a lender's questionnaire or certification or statements-a statement of unpaid assessments, which must be furnished within 10 ~~business~~-days after receipt of the request, in an amount not to exceed two hundred dollars (\$200.00) per ~~statement or request, item requested~~, and an additional ~~expedite~~-expedited fee in an amount not to exceed one hundred dollars (\$100.00) if the item is requested to be furnished less than 10 days after ~~request is made within 48 hours of closing, all of which~~ receipt of the request. These charges may be collected by the association, its managers, or its agents. Any charge for preparation of a lender's questionnaire or certification shall be paid by the requesting party. Neither the association nor its managing agent shall impose any charge upon a lot owner or a prospective purchaser of a lot in connection with the conveyance of a lot unless the charge is authorized in this subdivision. Violation of this subdivision by an association or by its managing agent shall constitute an unfair and deceptive trade practice under G.S. 75-1.1.

...

(15a) Exercise any authority granted to it under the declaration to approve or disapprove any proposed changes on a lot or limited common element. In exercising such authority the association shall provide a fair, reasonable, and expeditious procedure for making its decision, which procedure shall be set

1 forth in the association's governing documents. The procedures shall state the
2 maximum time for issuance of any decision on a proposal or a request for
3 reconsideration. At a minimum, a decision shall be made within 90 days after
4 the initial submission of the proposal or submission of any additional
5 information or changes to the proposal requested by the association in
6 response to the initial submission. A decision shall be in writing, shall be made
7 in good faith, and may not be unreasonable, arbitrary, or capricious. If the
8 proposal is disapproved, the decision shall include both an explanation of why
9 the proposal is disapproved and a description of the procedure for
10 reconsideration of the decision by the executive board.

11 "

12 **SECTION 6.** G.S. 47F-3-107.1 reads as rewritten:

13 **"§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or**
14 **services.**

15 Unless a specific procedure for the imposition of fines or suspension of planned community
16 privileges or services is provided for in the declaration, a hearing shall be held before the
17 executive board or an adjudicatory panel appointed by the executive board to determine if any
18 lot owner should be fined or if planned community privileges or services should be suspended
19 pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any
20 adjudicatory panel appointed by the executive board shall be composed of members of the
21 association who are not officers of the association or members of the executive board. The lot
22 owner charged shall be given notice of the charge, opportunity to be heard and to present
23 evidence, and notice of the decision. A written notice of hearing shall be sent to the unit owner
24 as provided in G.S. 47F-3-116(e) not less than 10 days prior to the scheduled hearing date. The
25 notice of hearing shall specify the date, time, and place of the hearing and shall include a general
26 description of each alleged violation and the action, if any, to cure each alleged violation. The
27 unit owner shall be given an opportunity to be heard and to present evidence at the hearing. A
28 written notice of the decision specifying each violation verified by the evidence and the action,
29 if any, to cure each verified violation shall be sent to the unit owner as provided in
30 G.S. 47F-3-116(e). If it is decided that a fine should be imposed, a fine not to exceed one hundred
31 dollars (\$100.00) may be imposed for the violation and without further hearing, for each day
32 more than five days after the decision that the violation ~~occurs~~ occurs, up to a maximum fine of
33 two thousand five hundred dollars (\$2,500). Such fines shall be assessments secured by liens
34 under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or
35 services should be imposed, the suspension may be continued without further hearing until the
36 violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel
37 to the full executive board by delivering written notice of appeal to the executive board within
38 15 days after the date of the decision. The executive board may affirm, vacate, or modify the
39 prior decision of the adjudicatory body. All fines collected pursuant to this section shall be
40 remitted to the Civil Penalty and Forfeiture Fund."

41 **SECTION 7.** G.S. 47F-3-116 reads as rewritten:

42 **"§ 47F-3-116. Lien for sums due the association; enforcement.**

43 (a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or
44 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the
45 clerk of superior court of the county in which the lot is located in the manner provided in this
46 section. A claim of lien securing a debt consisting of fines or fine-related charges shall be filed
47 separately from a claim of lien securing other sums due the association and shall be filed within
48 90 days after the date the fine was imposed. As used in this section, "fines or fine-related charges"
49 means fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by
50 the association related to fines imposed by the association. Once filed, a claim of lien secures all
51 sums due the association through the date filed and any sums due to the association thereafter.

Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the ~~claim~~ claims of lien provided for under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

(b) The association must provide proper notice of delinquent assessments to the lot owner before filing a claim of lien. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current physical mailing address, ~~address and current electronic mailing address~~. No fewer than 15 days prior to filing the lien, the association shall ~~mail~~ do all of the following:

(1) Mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

(2) Send a statement of the assessment amount due via electronic mail if the owner has designated an email address as provided in G.S. 55A-1-70(b).

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH ~~FORECLOSURE ENFORCEMENT AGAINST YOU AND YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE~~ AS PERMITTED UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. The association shall also send the owner a copy of the claim of lien and certificate of service by email if the owner has designated an email address as provided in G.S. 55A-1-70(b). In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three

years after the filing of the claim of lien in the office of the clerk of superior court. A lien securing a debt consisting of fines or fine-related charges is extinguished unless proceedings to enforce the lien are instituted within one year after the filing of the claim of lien in the office of the clerk of superior court.

(d) A claim of lien filed under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the lot, recorded before the filing of the claim of lien in the office of the clerk of superior court and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(e) Attorneys' fees. –

(1) The association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums ~~due~~due, except as otherwise provided in subdivision (2) of this subsection.

(2) In an action to enforce a claim of lien securing a debt consisting of fines or fine-related charges, upon findings by the court (i) that there was an unwarranted refusal by the lot owner to negotiate or pay the fines or fine-related charges and (ii) that the amount of damages recovered exceeded the highest offer made by the lot owner no later than 90 days before the commencement of trial, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the duly licensed attorneys representing the association obtaining a judgment for damages in said suit, in an amount not to exceed ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount recovered, whichever is greater, said attorneys' fees to be taxed as a part of the court costs. When the presiding judge determines that an award of attorneys' fees is to be made under this subsection in an action to enforce a claim of lien securing a debt consisting of fines or fine-related charges, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the debt secured by the claim of lien, and setting forth the amount of the highest offer made by the lot owner 90 days or more before the commencement of trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded.

(3) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant lot on which no dwelling has been constructed or a lot for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the

1 outstanding balance, as provided in subsection (i) of this section, and shall
2 provide the name and telephone number of the representative.

3 (f) Except as provided in subsection (h) of this section, the association, acting through
4 the executive board, may foreclose a claim of lien securing a debt consisting of sums due the
5 association other than fines or fine-related charges in like manner as a mortgage or deed of trust
6 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,
7 if the ~~assessment remains unpaid~~ delinquency has continued for ~~90-180~~ days or more. The
8 association shall not foreclose the claim of lien unless the executive board votes to commence
9 the proceeding against the specific lot.

10 The following provisions and procedures shall be applicable to and complied with in every
11 nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall
12 control to the extent they are inconsistent or in conflict with the provisions of Article 2A of
13 Chapter 45 of the General Statutes:

14 ...

15 (5) After the association has filed a claim of lien and prior to the commencement
16 of a nonjudicial foreclosure, the association shall give to the lot owner notice
17 of the association's intention to commence a nonjudicial foreclosure to enforce
18 its claim of lien. The notice shall contain the information required in
19 ~~G.S. 45-21.16(c)(5a)~~ G.S. 45-21.16(c)(5) and G.S. 45-21.16(c)(5a) and shall
20 specifically reference the lot owner's right of redemption provided under
21 subdivision (8) of this subsection. The notice shall be sent by first class mail
22 to the physical address of the lot and the lot owner's address of record with the
23 association and, if different, to the address for the lot owner shown on the
24 county tax records for the lot.

25 (5a) The notice of hearing required pursuant to G.S. 45-21.16(a) shall be
26 accompanied by the association's certification of the actions it has taken to
27 give the owner notice of delinquent assessments in compliance with
28 subsection (b) of this section.

29 (5b) At the commencement of the hearing, the clerk shall inquire as to whether the
30 owner occupies the lot as his or her principal residence. If it appears that the
31 owner does currently occupy the lot as a principal residence, the clerk shall
32 further inquire as to the efforts the association has made to communicate with
33 the owner and to attempt to resolve the matter voluntarily before the
34 foreclosure proceeding. The clerk's inquiry shall not be required if the
35 association has submitted, at or before the hearing, an affidavit briefly
36 describing any efforts that have been made to resolve the default with the
37 owner and the results of any such efforts.

38 (5c) The clerk shall order the hearing continued if the clerk finds that there is good
39 cause to believe that additional time or additional measures have a reasonable
40 likelihood of resolving the delinquency without foreclosure. In determining
41 whether to continue the hearing, the clerk may consider (i) whether the
42 association has offered the owner an opportunity to resolve the foreclosure
43 under a payment schedule pursuant to subsection (i) of this section, (ii)
44 whether the association has engaged in actual responsive communication with
45 the owner, including telephone conferences or in-person meetings with the
46 owner or other actual two-party communications, (iii) whether the owner has
47 indicated that he or she has the intent and ability to resolve the delinquency
48 by making future payments under a payment plan, and (iv) whether the
49 initiation or continuance of good- faith voluntary resolution efforts between
50 the parties may resolve the matter without a foreclosure sale. Where good
51 cause exists to continue the hearing, the clerk shall order the hearing continued

1 to a date and time certain not more than 90 days from the date scheduled for
2 the original hearing. Nothing in this part shall limit the authority of the clerk
3 to continue a hearing for other good cause shown.

4

5 (g) The provisions of subsection (f) of this section do not prohibit or prevent an
6 association from pursuing judicial foreclosure of a claim of ~~lien, lien securing a debt consisting~~
7 ~~of sums due the association other than fines and fine-related charges,~~ from taking other actions
8 to recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any
9 judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of
10 assessments shall include an award of costs and reasonable attorneys' fees for the prevailing
11 party, which shall not be subject to the limitation provided in subdivision (f)(12) of this section.

12 (h) A claim of lien securing a debt consisting ~~solely of fines imposed by the association,~~
13 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
14 ~~imposed by the association or fine-related charges~~ may only be enforced by judicial foreclosure,
15 as provided in Article 29A of Chapter 1 of the General Statutes. ~~the filing of a civil action seeking~~
16 a judgment. In addition, an association shall not levy, charge, or attempt to collect a service,
17 collection, consulting, or administration fee from any lot owner unless the fee is expressly
18 allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees
19 may only be enforced by ~~judicial foreclosure, as provided in Article 29A of Chapter 1 of the~~
20 ~~General Statutes.~~ the filing of a civil action seeking a judgment. Liens arising as a result of the
21 entry of a judgment in favor of the association in any such civil action shall relate back and be
22 effective as of the date the claim of lien was filed.

23"

24 **SECTION 8.** G.S. 47F-3-118 reads as rewritten:

25 **"§ 47F-3-118. Association records.**

26 ...

27 (a1) A lot owner or the lot owner's authorized agent is entitled to inspect and copy, at a
28 reasonable time and location specified by the association, any contract entered into by the
29 association authorizing a managing agent to exercise any of the powers granted to the association
30 pursuant to G.S. 47F-3-102, if the lot owner gives the association written notice of the demand
31 at least five business days before the date on which the lot owner wishes to inspect and copy and
32 the request satisfies the conditions for inspection set forth in G.S. 55A-16-02(c). A demand to
33 inspect made pursuant to this subsection shall be presumed to have been made in good faith and
34 for a proper purpose. In any action to compel the inspection and copying of documents, the court
35 may award reasonable attorneys' fees to the prevailing party. If the association does not allow a
36 lot owner who complies with this subsection to inspect and copy the requested contract, and if a
37 court of competent jurisdiction thereafter enters an order compelling the association to do so, the
38 court shall also order the association to pay the lot owner's costs, including reasonable attorneys'
39 fees, incurred to obtain the order.

40"

41 **SECTION 9.** Article 31A of Chapter 115C of the General Statutes reads as rewritten:

42 "Article 31A.

43 "Civil Penalty and Forfeiture Fund.

44 **"§ 115C-457.1. Creation of Fund; administration.**

45 (a) There is created the Civil Penalty and Forfeiture Fund. The Fund shall consist of the
46 clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State
47 agency and that the General Assembly is authorized to place in a State fund pursuant to Article
48 IX, Section 7(b) of the Constitution. The General Assembly may also authorize the placement of
49 additional funds from other sources into the Fund.

(b) The Fund shall be administered by the Office of State Budget and Management. The Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools.

"§ 115C-457.2. Remittance of moneys to the Fund.

(a) The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year.

(b) Any additional funds that the General Assembly authorizes to be placed in the Civil Penalty and Forfeiture Fund shall be remitted to the Office of State Budget and Management by the entity having custody of the funds within 10 days after the close of the calendar month in which the funds were received or collected.

...."

SECTION 10. G.S. 161-14 reads as rewritten:

"§ 161-14. Registration of instruments.

...

(b) All instruments, except instruments conforming to the provisions of ~~G.S. 25-9-521,~~ G.S. 25-9-521 and any certified copy of a court-filed document, presented for registration on paper shall meet all of the following requirements:

- (1) Be eight and one-half inches by eleven inches or eight and one-half inches by fourteen inches.
- (2) Have a blank margin of three inches at the top of the first page and blank margins of at least one-half inches on the remaining sides of the first page and on all sides of subsequent pages.
- (3) Be typed or printed in black on white paper in a legible font. A font size no smaller than 9 points shall be considered legible. Blanks in an instrument may be completed in pen and corrections to an instrument may be made in pen.
- (4) Have text typed or printed on one side of a page only.
- (5) State the type of instrument at the top of the first page.

If an instrument does not meet these requirements, the register of deeds shall register the instrument after collecting the fee for nonstandard documents as required by G.S. 161-10(a)(18a) in addition to all other applicable recording fees. However, if an instrument fails to meet the requirements because it contains print in a font size smaller than 9 points, the register of deeds may register the instrument without collecting the fee for nonstandard documents if, in the discretion of the register of deeds, the instrument is legible.

...."

SECTION 11.(a) G.S. 45-21.4 reads as rewritten:

"§ 45-21.4. Place of sale of real property.

(a) Every sale of real property shall be held in the county where the property is situated unless the property consists of a single tract situated in two or more counties.

(b) A sale of a single tract of real property situated in two or more counties may be held in any one of the counties in which any part of the tract is situated. As used in this section, a "single tract" means any tract which has a continuous boundary, regardless of whether parts

thereof may have been acquired at different times or from different persons, or whether it may have been subdivided into other units or lots, or whether it is sold as a whole or in parts.

(c) When a mortgage or deed of trust with power of sale of real property designates the place of sale within the county, the sale shall be held at the place so designated.

(d) When a mortgage or deed of trust with power of sale of real property confers upon the mortgagee or trustee the right to designate the place of sale, the sale shall be held at the place designated by the notice of sale, which place shall be either on the premises to be sold or as follows:

(1) Property situated wholly within a single county shall be sold at the courthouse door of the county in which the land is ~~situated~~situated or at another public location within the county where the land is situated as designated by the mortgagee or trustee.

(2) A single tract of property situated in two or more counties may be sold at the courthouse door of any one of the counties in which some part of the real property is ~~situated~~situated or at another public location within any one of the counties in which some part of the real property is situated as designated by the mortgagee or trustee.

(e) When a mortgage or deed of trust with power of sale of real property does not designate, or confer upon the mortgagee or trustee the right to designate, the place of sale, or when it designates as the place of sale some county in which no part of the property is situated, such real property shall be sold as follows:

(1) Property situated wholly within a single county shall be sold at the courthouse door of the county in which the land is ~~situated~~situated or at another public location within the county where the land is situated as designated by the clerk of the superior court of the county where the land is situated.

(2) A single tract of property situated in two or more counties may be sold at the courthouse door of any one of the counties in which some part of the real property is ~~situated~~situated or another public location within one of the counties in which some part of the real property is situated as designated by the clerk of the superior court of one of the counties in which some part of the real property is situated."

SECTION 11.(b) G.S. 45-21.23 reads as rewritten:

"§ 45-21.23. Time of sale.

A sale shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than ~~one hour~~three hours after the time fixed therefor unless it is delayed by other sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. on any day when the clerk's office is normally open for transactions."

SECTION 11.(c) Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.25A. Bids placed remotely.

(a) The person exercising the power of sale of real property, or that person's agent, may accept remote bids from bidders not physically present at the place of sale, as designated pursuant to G.S. 45-21.4. All bids accepted at the sale must be clearly announced to all participating bidders, whether physically present or not.

(b) Prior to accepting a remote bid, the person exercising the power of sale of real property, or that person's agent, shall collect all funds required to be paid by the winning bidder in accordance with G.S. 45-21.10.

(c) Any charges incurred by the person exercising the power of sale of real property, or that person's agent, in connection with remote bidding authorized under this section shall not be chargeable to the mortgagor or otherwise recoverable as costs and expenses of the foreclosure."

1 **SECTION 12.** Sections 3, 7, and 10 of this act become effective December 1, 2023,
2 and apply to claims of lien filed and instruments presented for registration on or after that date.
3 Section 11 of this act becomes effective October 1, 2023, and applies to notices of foreclosure
4 sale filed with the clerk of superior court on or after that date. The remainder of this act is
5 effective when it becomes law, and the provisions in Sections 1 and 5 of this act relating to
6 managing agent compensation apply to contracts between an association and a managing agent
7 entered into on or after that date.