



# HOUSE BILL 542: HOA Revisions/Foreclosure Trustee Auctions.

2023-2024 General Assembly

<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> June 27, 2023
<b>Introduced by:</b> Reps. Liu, Brody, Tyson, Iler	<b>Prepared by:</b> Bill Patterson
<b>Analysis of:</b> Third Edition	Staff Attorney

## OVERVIEW: *House Bill 542 would:*

- *Amend the laws governing unit owners' associations in condominiums and homeowners' associations in planned communities to:*
  - *Impose limits on association contracts with managing agents and give owners the right to inspect and copy those contracts.*
  - *Prohibit associations from regulating parking on public streets, imposing a fine for providing tutoring or academic, educational, music, or swimming lessons to small groups on the owner's property, or charging for performing certain administrative tasks related to transfers of title.*
  - *Limit association charges for copies of records provided upon a member's request.*
  - *Require associations to remit all collected fines to the Civil Fines and Forfeitures Fund and amend the law governing this fund to authorize such remittance.*
  - *Modify the procedure for enforcing association claims of lien by:*
    - *Strengthening requirements for notice to owners.*
    - *Requiring judicial foreclosure for any action to foreclose a lien securing unpaid assessments.*
    - *Prohibiting foreclosure to enforce a lien securing a debt consisting solely of fines and related interest and attorneys' fees.*
    - *Imposing deadlines for filing and enforcing a claim of lien, and limiting attorneys' fees in collection actions to 15% of the recovery, when the debt consists solely of fines and related interest and attorneys' fees .*
  - *Give owners the right to inspect and copy any management contract entered into by their owners' association, upon written demand.*
- *Exempt any certified copy of a court-filed document from formatting requirements applicable to paper documents presented to a register of deeds for registration.*
- *Allow for certain foreclosure sales to be conducted at designated public locations, expand the time allowed for a scheduled foreclosure sale to commence, and establish a procedure for remote bidding at a foreclosure sale.*

## CURRENT LAW:

The North Carolina Condominium Act, Chapter 47C of the General Statutes, and the North Carolina Planned Community Act, Chapter 47F of the General Statutes, provide that unless the governing declaration expressly provides to the contrary, unit owners' associations and homeowners' associations are empowered, among other things, to do the following:

- Hire and terminate managing agents.

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- Regulate the use of common elements.
- Levy fines for violations of the declaration, bylaws, and rules and regulations of the association.
- Impose reasonable charges in connection with the preparation of statements of unpaid assessments, not to exceed \$200 per statement or request, and an additional expedite fee not to exceed \$100 for requests made within 48 hours of closing.

Currently, neither Chapter 47C nor Chapter 47F regulate the amount an association can charge to provide copies of records requested by a member. For associations organized as nonprofit corporations, the North Carolina Nonprofit Corporation Act permits a reasonable charge for producing any records provided to the member, not to exceed the estimated cost of production or reproduction covering the costs of labor and material.

Any assessment that is at least 30 days delinquent constitutes a lien on the member's unit or lot upon the filing of a claim of lien with the clerk's office in the county where the property is located. Once filed, the claim of lien secures all sums due at the time of filing as well as any sums becoming due thereafter. Unless the declaration provides otherwise, the claim of lien also secures all fees and other charges due and payable under the declaration, applicable law, or as the result of an arbitration, mediation, or judicial decision.

An association must make reasonable efforts to ensure that its records have the current mailing address of the unit or lot owner. No less than 15 days before filing the lien, the association must mail a statement of the assessment amount due by first class mail to the physical address of the unit or lot and the owner's address of record with the association and, if different, to the address on the county tax records. If the owner is a corporation or limited liability company, the statement must also be sent by first class mail to the mailing address of the registered agent for the corporation or limited liability company.

An association may foreclose a claim of lien in the same manner as a mortgage or deed of trust on real estate under a power of sale, provided that the assessment has remained unpaid for at least 90 days. For a claim of lien securing a debt consisting solely of unpaid fines, interest on unpaid fines, or attorneys' fees incurred solely associated with fines imposed by the association, may only be enforced by judicial foreclosure.

Under the Condominium Act, Chapter 47C of the General Statutes, and the Planned Community Act, Chapter 47F of the General Statutes, associations of unit owners and lot owners must make all financial and other records, including records of meetings of the association and executive board, reasonably available for examination by any owner and the owner's authorized agent as required in the association's bylaws and under the Nonprofit Corporation Act, Chapter 55A of the General Statutes.

Under the Nonprofit Corporation Act, a member of a nonprofit corporation has the right to inspect and copy certain specified categories of records if the member gives the corporation written notice of the demand at least five business days before the date on which the member wishes to inspect and copy. Contracts entered into by the corporation are not expressly referenced in this provision.

Instruments presented to a register of deeds for registration on paper, other than financing statements and amendments conforming to the requirements of Article 9 of the Uniform Commercial Code, must meet the following formatting requirements:

- Be eight and one-half inches by eleven inches or eight and one-half inches by fourteen inches.
- 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.

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- Be typed or printed in black on white paper in a legible font. A font size no smaller than nine points shall be considered legible. Blanks in an instrument may be completed in pen and corrections to an instrument may be made in pen.
- Have text typed or printed on one side of a page only.
- State the type of instrument at the top of the first page.

Instruments not meeting these requirements can be registered only after paying a \$25 fee for nonstandard documents in addition to all other applicable recording fees. If the instrument's only noncompliance is having a font size smaller than nine points, it can be registered without payment of the fee if, in the discretion of the register of deeds, the instrument is legible.

Paper documents filed with the court must be unfolded and firmly bound with no manuscript cover, and except for wills and exhibits, must be letter size (8 1/2" x 11").

Article 2A of Chapter 45 of the General Statutes governs sales under a power of sale. If the sale is not held on the premises to be sold, it must be held at the courthouse door of the county in which all of the property is situated, or if the property is situated in more than one county, it can be held at the courthouse door for any county in which it is situated.

A sale must begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after that time unless delayed by other sales held at the same place.

There is no current statutory authority for the person exercising the power of sale to accept remote bids from bidders not physically present at the place of sale.

## **BILL ANALYSIS:**

**Sections 1 and 5** of House Bill 542 would make the following changes to the powers of owners' associations:

- Prohibit association contracts with a managing agent for a term of more than one year, or containing an automatic renewal provision.
- Prohibit association regulation of parking on a public street or public road for which the North Carolina Department of Transportation or a local government has assumed responsibility for maintenance and repairs.
- Prohibit associations from charging for administrative tasks required upon the transfer of title other than currently authorized charges for preparing statements of unpaid assessments, and make violation of this prohibition an unfair and deceptive trade practice under G.S. 75-1.1.
- Authorize associations to impose a reasonable charge for providing copies of records requested by a member, not to exceed the actual cost of photocopying the records.

**Sections 2 and 6** of the bill would require all fines collected by an association to be remitted to the Civil Fines and Forfeitures Fund.

**Sections 3 and 7** of the bill would make the following changes to the laws governing enforcement of claims of lien for sums due to owners' associations:

- The association would be required to make reasonable efforts to ensure it has the current email address and current telephone number of the owner.
- The association would be required to provide proper notice of delinquent assessments to the owner before filing a claim of lien. New requirements would include:

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- Sending a statement of the assessment due and a copy of any filed claim of lien and its certificate of service via electronic email if the owner has designated an email address as provided for in the Nonprofit Corporation Act.
- Attempting to notify the owner by telephone of the delinquent assessments and the delivery details of the statement of the assessment amount due, if the owner has provided a telephone number to be used by the association for communicating with the owner.
- For a lien securing a debt consisting solely of fines or related interest or attorneys' fees, the association would be required to:
  - File the claim of lien within 30 days after the date the fine was imposed.
  - Institute proceedings to enforce the lien within 180 days after the filing of the claim of lien.
- In any action to enforce lien securing a debt consisting solely of fines or related interest or attorneys' fees, any award of attorneys' fees could not exceed 15% of the amount recovered.
- An association would be permitted to foreclose on a claim of lien only by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes, provided that all of the following requirements are met:
  - The unpaid assessments exceed the lesser of \$2,500 or 12 months of assessments.
  - The debt secured by the lien does not consist solely of fines or related interest or attorneys' fees.
  - The assessment remains unpaid for at least 90 days.
  - The executive board votes to commence the proceeding against the specific owner's property.
- The association's current authority to use judicial foreclosure to enforce a lien securing only fines and related interest and attorneys' fees would be repealed.

**Sections 4 and 8** would require an owners' association to permit an owner, or the owner's authorized representative, to inspect and copy any agreement the association has entered under which a managing agent is authorized to exercise any of the powers granted by statute to the association if the owner gives the association written notice of the demand at least five days before the date on which the owner wishes to inspect and copy.

**Section 9** would amend Article 31A of Chapter 115C of the General Statutes governing the Civil Fines and Forfeitures Fund ("Fund") to provide that the General Assembly may authorize the placement of additional funds into the Fund, and to require the entity having custody of such additional funds to remit them to the Office of State Budget and Management within 10 days after the close of the calendar month in which the funds were received. Currently, Article 31A only requires the clear proceeds of civil penalties, civil forfeitures, and civil fines collected by a State agency to be placed into the Fund. This change supports the requirement imposed by Sections 2 and 6 of the bill that all fines imposed by an association must be remitted to the Fund.

**Section 10** would exempt any certified copy of a court-filed document from the formatting requirements otherwise applicable to paper documents presented for registration to a register of deeds.

**Section 11** would:

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- Provide that a sale held under a power of sale that is not held on the premises being sold can be held either at the courthouse door in the county or counties in which the property is situated, or at another public location within that county as designated by the mortgagee or trustee.
- Permit the sale to take place up to three hours after the time designated in the notice of sale.
- Permit the person exercising the power of sale, or their agent, to accept remote bids from persons not physically present at the place of sale. Before accepting a remote bid the person exercising the power of sale, or their agent, must collect all sums required to be paid by the winning bidder. Any charges incurred in connection with remote bidding would not be chargeable to the mortgagor or otherwise recoverable as costs and expenses of the foreclosure.

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