

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70383-RU-29 (3/28)

Short Title: Homeowner Association Amendments. (Public)

Sponsors: Representatives Earle, Weiss, Stam, and Barnhart (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS
3 TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 47F-3-102(11) reads as rewritten:

6 "§ 47F-3-102. Powers of owners' association.

7 Unless the articles of incorporation or the declaration expressly provides to the
8 contrary, the association may:

9 ...

10 (11) Impose reasonable charges for late payment of assessments
11 assessments, not to exceed the greater of fifteen dollars (\$15.00) or ten
12 percent (10%) of the amount of the unpaid assessment and, after notice
13 and an opportunity to be heard, suspend privileges or services provided
14 by the association (except rights of access to lots) during any period
15 that assessments or other amounts due and owing to the association
16 remain unpaid for a period of 30 days or longer;

17"

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

19 "§ 47F-3-107.1. Procedures for fines and suspension of planned community
20 privileges or services.

21 Unless a specific procedure for the imposition of fines or suspension of planned
22 community privileges or services is provided for in the declaration, a hearing shall be
23 held before an adjudicatory panel appointed by the executive board to determine if any
24 lot owner should be fined or if planned community privileges or services should be
25 suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and
26 (12). The adjudicatory panel shall be composed of members of the association who are
27 not officers of the association or members of the executive board. Decisions by the

1 adjudicatory panel shall be appealable by the lot owner to the full executive board. If the
2 executive board fails to appoint an adjudicatory panel to hear such matters, hearings
3 under this section shall be held before the full executive board. The lot owner charged
4 shall be given notice of the charge, opportunity to be heard and to present evidence, and
5 notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed
6 one hundred ~~fifty~~ dollars (~~\$150.00~~)(~~\$100.00~~) may be imposed for the violation and
7 without further hearing, for each day more than 10 days after the decision that the
8 violation ~~occurs~~-occurs, up to a maximum of one thousand dollars (\$1,000). Such fines
9 shall be G.S. 47F-3-116. If it is decided that a suspension of planned community
10 privileges or services should be imposed, the suspension may be continued without
11 further hearing until the violation or delinquency is cured."

12 **SECTION 3.** G.S. 47F-3-108 reads as rewritten:

13 "**§ 47F-3-108. Meetings.**

14 (a) A meeting of the association shall be held at least once each year. Special
15 meetings of the association may be called by the president, a majority of the executive
16 board, or by lot owners having ten percent (10%), or any lower percentage specified in
17 the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in
18 advance of any meeting, the secretary or other officer specified in the bylaws shall
19 cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
20 address of each lot or to any other mailing address designated in writing by the lot
21 owner, or sent by electronic means, including by electronic mail over the Internet, to an
22 electronic mailing address designated in writing by the lot owner. The notice of any
23 meeting shall state the time and place of the meeting and the items on the agenda,
24 including the general nature of any proposed amendment to the declaration or bylaws,
25 any budget changes, and any proposal to remove a director or officer.

26 (b) All meetings of the association and the board of directors shall be open to all
27 members of the association or any person designated by a member in writing as the
28 member's representative and all members or designated representatives so desiring shall
29 be permitted to attend and speak at an appropriate time during the deliberations and
30 proceedings. The board may place reasonable time restrictions on those persons
31 speaking during the meeting but shall permit a member or a member's representative to
32 speak before the association or board takes formal action on an item under discussion in
33 addition to any other opportunities to speak. The board shall provide for a reasonable
34 number of persons to speak on each side of an issue.

35 (c) Except as otherwise provided for in the declaration, meetings of the
36 association and board of directors shall be conducted in accordance with general
37 principles of parliamentary procedure. The provisions of the most recent edition of
38 Robert's Rules of Order shall govern any procedural matter for which no other provision
39 has been made."

40 **SECTION 4.** G.S. 47F-3-116 reads as rewritten:

41 "**§ 47F-3-116. Lien for assessments.**

42 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days
43 or longer shall constitute a lien on that lot when a claim of lien is filed of record in the
44 office of the clerk of superior court of the county in which the lot is located in the

1 manner provided herein. Except for fines assessed under G.S. 47F-3-107.1, interest on
2 unpaid fines and attorneys' fees allowed for the collection of fines, the~~The~~ association
3 may foreclose the claim of lien in like manner as a mortgage on real estate under power
4 of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration
5 otherwise provides, fees, charges, late charges, ~~fines, interest,~~interest other than interest
6 on fines, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107,
7 ~~47F-3-107.1,~~ and 47F-3-115 are enforceable as assessments under this section. An
8 association may not foreclose an association assessment lien if the debt securing the lien
9 consists solely of fines assessed by the association, interest on unpaid fines, or attorneys'
10 fees incurred by the association solely associated with fines assessed by the association.

11 A lot owner may redeem the property from any purchaser at a sale foreclosing an
12 association's assessment lien not later than the 180th day after the date the association
13 mails written notice of the sale to the owner under Article 2A of Chapter 45 of the
14 General Statutes.

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

21 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce
22 the lien are instituted within three years after the docketing of the claim of lien in the
23 office of the clerk of superior court.

24 (d) This section does not prohibit other actions to recover the sums for which
25 subsection (a) of this section creates a lien or prohibit an association taking a deed in
26 lieu of foreclosure.

27 (e) A judgment, decree, or order in any action brought under this section shall
28 include costs and may include reasonable attorneys' fees for the prevailing ~~party,~~party in
29 an amount not to exceed the amount in controversy. The amount in controversy means
30 the principal obligation due at the time of the filing of the proceeding together with
31 interest on the principal amount actually accrued through the date of the order or
32 judgment.

33 (f) Where the holder of a first mortgage or first deed of trust of record, or other
34 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or
35 first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be
36 liable for the assessments against such lot which became due prior to the acquisition of
37 title to such lot by such purchaser. Such unpaid assessments shall be deemed to be
38 common expenses collectible from all the lot owners including such purchaser, its heirs,
39 successors, and assigns.

40 (g) A claim of lien shall set forth the name and address of the association, the
41 name of the record owner of the lot at the time the claim of lien is filed, a description of
42 the lot, and the amount of the lien claimed."

43 **SECTION 5.** Article 3 of Chapter 47F is amended by adding the following
44 new sections to read:

1 "§ 47F-3-116.1. Collections.

2 (a) Notwithstanding any law or any provisions of the governing documents to the
3 contrary, this section shall apply to debts for assessments that arise on and after January
4 1, 2006.

5 (b) An association that seeks to collect delinquent regular or special assessments
6 of an amount less than two thousand five hundred dollars (\$2,500), not including any
7 late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that
8 debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure
9 that debt in any of the following ways:

10 (1) By a civil action in small claims court, pursuant to Article 19 of
11 Chapter 7A of the General Statutes. An association that chooses to
12 proceed by an action in small claims court, and prevails, may enforce
13 the judgment as permitted under Article 28 of Chapter 1 of the General
14 Statutes. The amount that may be recovered in small claims court to
15 collect upon a debt for delinquent assessments may not exceed the
16 jurisdictional limits of the small claims court and shall be the sum of
17 the following:

18 a. The amount owed as of the date of filing the complaint in the
19 small claims court proceeding.

20 b. In the discretion of the court, an additional amount described in
21 sub-subdivision a. of this subsection equal to the amount owed
22 for the period from the date the complaint is filed until the
23 estimated date of judgment.

24 (2) By recording a lien on the owner's separate interest upon which the
25 association may not foreclose until the amount of the delinquent
26 assessments secured by the lien, exclusive of any late charges, fees and
27 costs of collection, attorneys' fees, or interest, equals or exceeds two
28 thousand five hundred dollars (\$2,500). An association that chooses to
29 record a lien under these provisions, prior to recording the lien, shall
30 offer the owner and, if so requested by the owner, participate in
31 dispute resolution as set forth in G. S. 7A-38.4A.

32 (3) Any other manner provided by law, except for judicial or nonjudicial
33 foreclosure.

34 (c) An association that seeks to collect delinquent regular or special assessments
35 of an amount of two thousand five hundred dollars (\$2,500) or more, not including any
36 late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or
37 nonjudicial foreclosure subject to the following conditions:

38 (1) Prior to initiating a foreclosure on an owner's separate interest, the
39 association shall offer the owner and, if so requested by the owner,
40 participate in dispute resolution as set forth in G.S. 7A-38.4A. The
41 decision to pursue dispute resolution shall be the choice of the owner,
42 except that binding arbitration shall not be available if the association
43 intends to initiate a judicial foreclosure.

- 1 (2) The decision to initiate foreclosure of a lien for delinquent assessments
2 that has been validly recorded shall be made only by the board of
3 directors of the association and may not be delegated to an agent of the
4 association. The board shall approve the decision by a majority vote of
5 the board members in an executive session. The board shall record the
6 vote in the minutes of that meeting. The board shall maintain the
7 confidentiality of the owner or owners of the separate interest by
8 identifying the matter by the parcel number of the property, rather than
9 the name of the owner or owners.
- 10 (3) The board shall provide personal notice to an owner of a separate
11 interest who occupies the separate interest if the board votes to
12 foreclose upon the separate interest. The board shall provide written
13 notice to an owner of a separate interest who does not occupy the
14 separate interest by first-class mail, postage prepaid, at the most
15 current address shown on the books of the association.
- 16 (4) A nonjudicial foreclosure by an association to collect upon a debt for
17 delinquent assessments shall be subject to a right of redemption as set
18 forth in G.S. 47F-3-116.
- 19 (5) A nonjudicial or judicial foreclosure by an association to collect upon
20 a debt for delinquent assessments shall comply with the following
21 requirements:
- 22 a. The minimum bid shall be at least seventy-five percent (75%)
23 of the appraised value, excluding any senior liens subject to
24 which the successful bidder would be taking title.
- 25 b. An appraiser appropriately licensed under Article 1 of Chapter
26 93E of the General Statutes shall perform the exterior appraisal.
27 The cost of the appraisal shall be recouped at sale if the
28 property is auctioned or at cure of the default prior to sale. The
29 appraisal shall be completed at least 30 days, but no more than
30 60 days, prior to sale unless, in the event of a judicial
31 foreclosure, the court orders a different completion date.

32 **"§ 47F-3-117. Financial reporting.**

33 (a) The association shall prepare an annual financial report within 60 days after
34 the close of the fiscal year. The association shall, within 75 days after the close of the
35 fiscal year, provide each lot owner with a copy of the annual financial report or a
36 written notice that a copy of the financial report is available upon request at no charge to
37 the lot owner.

38 (b) Financial reports shall be prepared as follows:

- 39 (1) An association that meets the criteria of this subdivision shall prepare
40 or cause to be prepared a complete set of financial statements in
41 accordance with generally accepted accounting principles. The
42 financial statements shall be based upon the association's total annual
43 revenues, as follows:

- 1 a. An association with total annual revenues of one hundred
2 thousand dollars (\$100,000) or more, but less than two hundred
3 thousand dollars (\$200,000), shall prepare compiled financial
4 statements.
- 5 b. An association with total annual revenues of at least two
6 hundred thousand dollars (\$200,000), but less than four hundred
7 thousand dollars (\$400,000), shall prepare reviewed financial
8 statements.
- 9 c. An association with total annual revenues of four hundred
10 thousand dollars (\$400,000) or more shall prepare audited
11 financial statements.
- 12 d. An association with total annual revenues of less than one
13 hundred thousand dollars (\$100,000) shall prepare a report of
14 cash receipts and expenditures.
- 15 (2) An association in a community of fewer than 50 parcels, regardless of
16 the association's annual revenues, may prepare a report of cash receipts
17 and expenditures in lieu of financial statements required by
18 subdivision (1) of this subsection unless the declaration provides
19 otherwise.
- 20 (3) A report of cash receipts and disbursement must disclose the amount
21 of receipts by accounts and receipt classifications and the amount of
22 expenses by accounts and expense classifications, including the
23 following, as applicable: costs for security, professional, and
24 management fees and expenses; taxes; costs for recreation facilities;
25 expenses for refuse collection and utility services; expenses for lawn
26 care; costs for building maintenance and repair; insurance costs;
27 administration and salary expenses; and reserves if maintained by the
28 association.
- 29 (c) If twenty percent (20%) of the parcel owners petition the board for a level of
30 financial reporting higher than that required by this section, the association shall duly
31 notice and hold a meeting of members within 30 days of receipt of the petition for the
32 purpose of voting on raising the level of reporting for that fiscal year. Upon approval of
33 a majority of the total voting interests of the lot owners, the association shall prepare or
34 cause to be prepared, shall amend the budget or adopt a special assessment to pay for
35 the financial report regardless of any provision to the contrary in the declaration, and
36 shall provide within 90 days of the meeting or the end of the fiscal year, whichever
37 occurs later, one of the following:
- 38 (1) Compiled, reviewed, or audited financial statements, if the association
39 is otherwise required to prepare a report of cash receipts and
40 expenditures.
- 41 (2) Reviewed or audited financial statements, if the association is
42 otherwise required to prepare compiled financial statements.
- 43 (3) Audited financial statements, if the association is otherwise required to
44 prepare reviewed financial statements.

1 (d) If approved by a majority of the voting interests present at a properly called
2 meeting of the association, an association may prepare or cause to be prepared, one of
3 the following:

- 4 (1) A report of cash receipts and expenditures in lieu of a compiled,
5 reviewed, or audited financial statement.
6 (2) A report of cash receipts and expenditures or a compiled financial
7 statement in lieu of a reviewed or audited financial statement.
8 (3) A report of cash receipts and expenditures, a compiled financial
9 statement, or a reviewed financial statement in lieu of an audited
10 financial statement."

11 **SECTION 6.** G.S. 47F-3-120 reads as rewritten:

12 **"§ 47F-3-120. Declaration limits on attorneys' fees.**

13 Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the
14 articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations,
15 the court may award reasonable attorneys' fees to the prevailing party up to a maximum
16 of two thousand five hundred dollars (\$2,500), if recovery of attorneys' fees is allowed
17 in the declaration. A lot owner is not liable for attorneys' fees incurred by the
18 association relating to a matter described by notice under G.S. 47F-3-107.1 if the
19 attorneys' fees are incurred before the conclusion of the hearing under
20 G.S. 47F-3-107.1. Attorneys' fees may be collected by the association only if the lot
21 owner is provided a written notice that attorneys' fees and cost will be charged to the lot
22 owner if the delinquency or violation continues after a date certain, at least 10 days after
23 the notice is received by the lot owner."

24 **SECTION 7.** Article 3 of Chapter 47F of the General Statutes is amended by
25 adding the following new section to read:

26 **"§ 47F-3-121. American flag and political sign displays.**

27 Notwithstanding any provision in any declaration of covenants, no restriction on the
28 use of land shall be construed to:

- 29 (1) Regulate or prohibit the display of the flag of the United States, of a
30 size no greater than four feet by six feet, which is displayed in
31 accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as
32 amended, governing the display and use of the flag of the United
33 States unless:
34 a. For restrictions registered prior to October 1, 2005, the
35 restriction specifically uses the following terms:
36 1. Flag of the United States of America;
37 2. American flag; or
38 3. United States flag.
39 b. For restrictions registered on or after October 1, 2005, the
40 restriction shall be written on the first page of the instrument or
41 conveyance in print that is in boldface type, capital letters, and
42 no smaller than the largest print used elsewhere in the
43 instrument or conveyance. The restriction shall be construed to
44 regulate or prohibit the display of the United States flag only if

the restriction specifically states: **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA**'.

This subdivision shall apply to owners of property who display the flag of the United States on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

(2) Regulate or prohibit the indoor or outdoor display of a political sign by an association member on that member's property, unless:

a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the term "political signs".

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS**'.

When permitted under this subdivision, an association may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 8. G.S. 47C-3-102(11) 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:

...

(11) Impose charges for late payment of ~~assessments~~ assessments, not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of

1 the amount of the unpaid assessment and, after notice and an
2 opportunity to be heard, levy reasonable fines not to exceed one
3 hundred fifty dollars (\$150.00) (G.S. 47C-3-107.1) for violations of
4 the declaration, bylaws, and rules and regulations of the association;"

5 **SECTION 9.** G.S. 47C-3-107.1 reads as rewritten:

6 "**§ 47C-3-107.1. Charges for late payments, fines.**

7 ~~The bylaws of the association may provide for a hearing before an adjudicatory~~
8 ~~panel to determine if a unit owner should be fined not to exceed one hundred fifty~~
9 ~~dollars (\$150.00) for a violation of the declaration, bylaws or rules and regulations of~~
10 ~~the association. Such panel shall accord to the party charged with the violation notice of~~
11 ~~the charge, opportunity to be heard and to present evidence, and notice of the decision.~~
12 ~~Such a fine shall be an assessment secured by lien under G.S. 47C-3-116. Unless a~~
13 ~~specific procedure for the imposition of fines or suspension of condominium privileges~~
14 ~~or services is provided for in the declaration, a hearing shall be held before an~~
15 ~~adjudicatory panel appointed by the executive board to determine if any unit owner~~
16 ~~should be fined or if condominium privileges or services should be suspended pursuant~~
17 ~~to the powers granted to the association in G.S. 47C-3-102(11). The adjudicatory panel~~
18 ~~shall be composed of members of the association who are not officers of the association~~
19 ~~or members of the executive board. Decisions by the adjudicatory panel shall be~~
20 ~~appealable by the unit owner to the full executive board. If the executive board fails to~~
21 ~~appoint an adjudicatory panel to hear such matters, hearings under this section shall be~~
22 ~~held before the full executive board. The unit owner charged shall be given notice of the~~
23 ~~charge, opportunity to be heard and to present evidence, and notice of the decision. If it~~
24 ~~is decided that a fine should be imposed, a fine not to exceed one hundred dollars~~
25 ~~(\$100.00) may be imposed for the violation and without further hearing, for each day~~
26 ~~more than 10 days after the decision that the violation occurs, up to a maximum of one~~
27 ~~thousand dollars (\$1,000). Such fines shall be assessments secured by liens on the~~
28 ~~property but may not be foreclosed under G.S. 47C-3-116. If it is decided that a~~
29 ~~suspension of condominium privileges or services should be imposed, the suspension~~
30 ~~may be continued without further hearing until the violation or delinquency is cured."~~

31 **SECTION 10.** G.S. 47C-3-108 reads as rewritten:

32 "**§ 47C-3-108. Meetings.**

33 (a) A meeting of the association shall be held at least once each year. Special
34 meetings of the association may be called by the president, a majority of the executive
35 board, or by unit owners having twenty percent (20%) or any lower percentage specified
36 in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in
37 advance of any meeting, the secretary or other officer specified in the bylaws shall
38 cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
39 address of each unit or to any other mailing address designated in writing by the unit
40 owner, or sent by electronic means, including by electronic mail over the Internet, to an
41 electronic mailing address designated in writing by the unit owner. The notice of any
42 meeting must state the time and place of the meeting and the items on the agenda,
43 including the general nature of any proposed amendment to the declaration or bylaws,
44 any budget changes, and any proposal to remove a director or officer.

1 (b) All meetings of the association and the board of directors shall be open to all
2 members of the association or any person designated by a member in writing as the
3 member's representative, and all members or designated representatives so desiring shall
4 be permitted to attend and speak at an appropriate time during the deliberations and
5 proceedings. The board may place reasonable time restrictions on those persons
6 speaking during the meeting but shall permit a member or a member's representative to
7 speak before the association or board takes formal action on an item under discussion in
8 addition to any other opportunities to speak. The board shall provide for a reasonable
9 number of persons to speak on each side of an issue.

10 (c) Except as otherwise provided for in the declaration, meetings of the
11 association and board of directors shall be conducted in accordance with general
12 principles of parliamentary procedure. The provisions of the most recent edition of
13 Robert's Rules of Order shall govern any procedural matter for which no other provision
14 has been made."

15 **SECTION 11.** G.S. 47C-3-116 reads as rewritten:

16 "**§ 47C-3-116. Lien for assessments.**

17 (a) Any assessment levied against a unit remaining unpaid for a period of 30
18 days or longer shall constitute a lien on that unit when filed of record in the office of the
19 clerk of superior court of the county in which the unit is located in the manner provided
20 therefor by Article 8 of Chapter 44 of the General Statutes. Except for fines assessed
21 under G.S. 47C-3-107.1, interest on unpaid fines and attorneys' fees allowed for the
22 collection of fines, the ~~The~~ association's lien may be foreclosed in like manner as a
23 mortgage on real estate under power of sale under Article 2A of Chapter 45 of the
24 General Statutes. Unless the declaration otherwise provides, fees, charges, late charges,
25 fines, and interest—interest other than interest on fines, charged pursuant to
26 G.S. 47C 3-102(10), (11), and (12), G.S. 47C 3-107(d), and 47C 3-107.1,
27 G.S. 47C-3-102(10), (11), and (12) and G.S. 47C-3-107(d), are enforceable as
28 assessments under this section. An association may not foreclose an association
29 assessment lien if the debt securing the lien consists solely of fines assessed by the
30 association, interest on unpaid fines, or attorneys' fees incurred by the association solely
31 associated with fines assessed by the association.

32 A lot owner may redeem the property from any purchaser at a sale foreclosing an
33 association's assessment lien not later than the 180th day after the date the association
34 mails written notice of the sale to the owner under Article 2A of Chapter 45 of the
35 General Statutes.

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

42 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce
43 the lien are instituted within three years after the docketing thereof in the office of the
44 clerk of superior court.

1 (d) This section does not prohibit actions to recover sums for which subsection
2 (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

3 (e) A judgment, decree, or order in any action brought under this section ~~must~~
4 shall include costs and may include reasonable attorneys' fees for the prevailing
5 party-party in an amount not to exceed the amount in controversy. The amount in
6 controversy means the principal obligation due at the time of the filing of the
7 proceeding together with interest on the principal amount actually accrued through the
8 date of the order or judgment.

9 (f) Where the holder of a first mortgage or first deed of trust of record, or other
10 purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage
11 or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be
12 liable for the assessments against such unit which became due prior to acquisition of
13 title to such unit by such purchaser. Such unpaid assessments shall be deemed to be
14 common expenses collectible from all the unit owners including such purchaser, and its
15 heirs, successors and assigns."

16 **SECTION 12.** Article 3 of Chapter 47C of the General Statutes is amended
17 by adding the following new sections to read:

18 **"§ 47C-3-116.1. Collections.**

19 (a) Notwithstanding any law or any provisions of the governing documents to the
20 contrary, this section shall apply to debts for assessments that arise on and after January
21 1, 2006.

22 (b) An association that seeks to collect delinquent regular or special assessments
23 of an amount less than two thousand five hundred dollars (\$2,500), not including any
24 late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that
25 debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure
26 that debt in any of the following ways:

27 (1) By a civil action in small claims court, pursuant to Article 19 of
28 Chapter 7A of the General Statutes. An association that chooses to
29 proceed by an action in small claims court, and prevails, may enforce
30 the judgment as permitted under Article 28 of Chapter 1 of the General
31 Statutes. The amount that may be recovered in small claims court to
32 collect upon a debt for delinquent assessments may not exceed the
33 jurisdictional limits of the small claims court and shall be the sum of
34 the following:

35 a. The amount owed as of the date of filing the complaint in the
36 small claims court proceeding.

37 b. In the discretion of the court, an additional amount described in
38 sub-subdivision a. of this subsection equal to the amount owed
39 for the period from the date the complaint is filed until the
40 estimated date of judgment.

41 (2) By recording a lien on the owner's separate interest upon which the
42 association may not foreclose until the amount of the delinquent
43 assessments secured by the lien, exclusive of any late charges, fees and
44 costs of collection, attorneys' fees, or interest, equals or exceeds two

1 thousand five hundred dollars (\$2,500). An association that chooses to
2 record a lien under these provisions, prior to recording the lien, shall
3 offer the owner and, if so requested by the owner, participate in
4 dispute resolution as set forth in G. S. 7A-38.4A.

5 (3) Any other manner provided by law, except for judicial or nonjudicial
6 foreclosure.

7 (c) An association that seeks to collect delinquent regular or special assessments
8 of an amount of two thousand five hundred dollars (\$2,500) or more, not including any
9 late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or
10 nonjudicial foreclosure subject to the following conditions:

11 (1) Prior to initiating a foreclosure on an owner's separate interest, the
12 association shall offer the owner and, if so requested by the owner,
13 participate in dispute resolution as set forth in G.S. 7A-38.4A. The
14 decision to pursue dispute resolution shall be the choice of the owner,
15 except that binding arbitration shall not be available if the association
16 intends to initiate a judicial foreclosure.

17 (2) The decision to initiate foreclosure of a lien for delinquent assessments
18 that has been validly recorded shall be made only by the board of
19 directors of the association and may not be delegated to an agent of the
20 association. The board shall approve the decision by a majority vote of
21 the board members in an executive session. The board shall record the
22 vote in the minutes of that meeting. The board shall maintain the
23 confidentiality of the owner or owners of the separate interest by
24 identifying the matter by the parcel number of the property, rather than
25 the name of the owner or owners.

26 (3) The board shall provide personal notice to an owner of a separate
27 interest who occupies the separate interest if the board votes to
28 foreclose upon the separate interest. The board shall provide written
29 notice to an owner of a separate interest who does not occupy the
30 separate interest by first-class mail, postage prepaid, at the most
31 current address shown on the books of the association.

32 (4) A nonjudicial foreclosure by an association to collect upon a debt for
33 delinquent assessments shall be subject to a right of redemption as set
34 forth in G.S. 47C-3-116.

35 (5) A nonjudicial or judicial foreclosure by an association to collect upon
36 a debt for delinquent assessments shall comply with the following
37 requirements:

38 a. The minimum bid shall be at least seventy-five percent (75%)
39 of the appraised value, excluding any senior liens subject to
40 which the successful bidder would be taking title.

41 b. An appraiser appropriately licensed under Article 1 of Chapter
42 93E of the General Statutes shall perform the exterior appraisal.
43 The cost of the appraisal shall be recouped at sale if the
44 property is auctioned or at cure of the default prior to sale. The

1 appraisal shall be completed at least 30 days, but no more than
2 60 days, prior to sale unless, in the event of a judicial
3 foreclosure, the court orders a different completion date.

4 **"§ 47C-3-116.2. Financial reporting.**

5 (a) The association shall prepare an annual financial report within 60 days after
6 the close of the fiscal year. The association shall, within 75 days after the close of the
7 fiscal year, provide each lot owner with a copy of the annual financial report or a
8 written notice that a copy of the financial report is available upon request at no charge to
9 the lot owner.

10 (b) Financial reports shall be prepared as follows:

11 (1) An association that meets the criteria of this subdivision shall prepare
12 or cause to be prepared a complete set of financial statements in
13 accordance with generally accepted accounting principles. The
14 financial statements shall be based upon the association's total annual
15 revenues, as follows:

16 a. An association with total annual revenues of one hundred
17 thousand dollars (\$100,000) or more, but less than two hundred
18 thousand dollars (\$200,000), shall prepare compiled financial
19 statements.

20 b. An association with total annual revenues of at least two
21 hundred thousand dollars (\$200,000), but less than four hundred
22 thousand dollars (\$400,000), shall prepare reviewed financial
23 statements.

24 c. An association with total annual revenues of four hundred
25 thousand dollars (\$400,000) or more shall prepare audited
26 financial statements.

27 d. An association with total annual revenues of less than one
28 hundred thousand dollars (\$100,000) shall prepare a report of
29 cash receipts and expenditures.

30 (2) An association in a community of fewer than 50 parcels, regardless of
31 the association's annual revenues, may prepare a report of cash receipts
32 and expenditures in lieu of financial statements required by
33 subdivision (1) of this subsection unless the declaration provides
34 otherwise.

35 (3) A report of cash receipts and disbursement must disclose the amount
36 of receipts by accounts and receipt classifications and the amount of
37 expenses by accounts and expense classifications, including the
38 following, as applicable: costs for security, professional, and
39 management fees and expenses; taxes; costs for recreation facilities;
40 expenses for refuse collection and utility services; expenses for lawn
41 care; costs for building maintenance and repair; insurance costs;
42 administration and salary expenses; and reserves if maintained by the
43 association.

1 (c) If twenty percent (20%) of the parcel owners petition the board for a level of
2 financial reporting higher than that required by this section, the association shall duly
3 notice and hold a meeting of members within 30 days of receipt of the petition for the
4 purpose of voting on raising the level of reporting for that fiscal year. Upon approval of
5 a majority of the total voting interests of the lot owners, the association shall prepare or
6 cause to be prepared, shall amend the budget or adopt a special assessment to pay for
7 the financial report regardless of any provision to the contrary in the declaration, and
8 shall provide within 90 days of the meeting or the end of the fiscal year, whichever
9 occurs later, one of the following:

10 (1) Compiled, reviewed, or audited financial statements, if the association
11 is otherwise required to prepare a report of cash receipts and
12 expenditures.

13 (2) Reviewed or audited financial statements, if the association is
14 otherwise required to prepare compiled financial statements.

15 (3) Audited financial statements, if the association is otherwise required to
16 prepare reviewed financial statements.

17 (d) If approved by a majority of the voting interests present at a properly called
18 meeting of the association, an association may prepare or cause to be prepared, one of
19 the following:

20 (1) A report of cash receipts and expenditures in lieu of a compiled,
21 reviewed, or audited financial statement.

22 (2) A report of cash receipts and expenditures or a compiled financial
23 statement in lieu of a reviewed or audited financial statement.

24 (3) A report of cash receipts and expenditures, a compiled financial
25 statement, or a reviewed financial statement in lieu of an audited
26 financial statement.

27 **"§ 47C-3-121. American flag and political sign displays.**

28 Notwithstanding any provision in any declaration of covenants, no restriction on the
29 use of land shall be construed to:

30 (1) Regulate or prohibit the display of the flag of the United States, of a
31 size no greater than four feet by six feet, which is displayed in
32 accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as
33 amended, governing the display and use of the flag of the United
34 States unless:

35 a. For restrictions registered prior to October 1, 2005, the
36 restriction specifically uses the following terms:

37 1. Flag of the United States of America;

38 2. American flag; or

39 3. United States flag.

40 b. For restrictions registered on or after October 1, 2005, the
41 restriction shall be written on the first page of the instrument or
42 conveyance in print that is in boldface type, capital letters, and
43 no smaller than the largest print used elsewhere in the
44 instrument or conveyance. The restriction shall be construed to

1 regulate or prohibit the display of the United States flag only if
2 the restriction specifically states: **THIS DOCUMENT**
3 **REGULATES OR PROHIBITS THE DISPLAY OF THE**
4 **FLAG OF THE UNITED STATES OF AMERICA'**.

5 This subdivision shall apply to owners of property who display the
6 flag of the United States on their property and does not apply to
7 common areas, easements, rights-of-way, or other areas owned by
8 others.

9 (2) Regulate or prohibit the indoor or outdoor display of a political sign by
10 an association member on that member's property, unless:

11 a. For restrictions registered prior to October 1, 2005, the
12 restriction specifically uses the term "political signs".

13 b. For restrictions registered on or after October 1, 2005, the
14 restriction shall be written on the first page of the instrument or
15 conveyance in print that is in boldface type, capital letters, and
16 no smaller than the largest print used elsewhere in the
17 instrument or conveyance. The restriction shall be construed to
18 regulate or prohibit the display of political signs only if the
19 restriction specifically states: **THIS DOCUMENT**
20 **REGULATES OR PROHIBITS THE DISPLAY OF THE**
21 **POLITICAL SIGNS'**.

22 When permitted under this subdivision, an association may prohibit
23 the display of political signs earlier than 45 days before the day of the
24 election and later than seven days after an election day. An association
25 may regulate the size and number of political signs that may be placed
26 on a member's property if the association's regulation is no more
27 restrictive than any applicable city, town, or county ordinance that
28 regulates the size and number of political signs on residential property.
29 If the local government in which the property is located does not
30 regulate the size and number of political signs on residential property,
31 the association shall permit at least one political sign with the
32 maximum dimensions of 24 inches by 24 inches on a member's
33 property. For the purposes of this subdivision, "political sign" means a
34 sign that attempts to influence the outcome of an election, including
35 supporting or opposing an issue on the election ballot. This
36 subdivision shall apply to owners of property who display political
37 signs on their property and does not apply to common areas,
38 easements, rights-of-way, or other areas owned by others."

39 **SECTION 13.** G.S. 47C-4-117 reads as rewritten:

40 **"§ 47C-4-117. Effect of violations on rights of action; attorney's fees.**

41 If a declarant or any other person subject to this chapter fails to comply with any
42 provision hereof or any provision of the declaration or bylaws, any person or class of
43 person adversely affected by that failure has a claim for appropriate relief. ~~The court~~
44 ~~may award reasonable attorney's fees to the prevailing party.~~ Except as otherwise

1 provided for in G.S. 47C-3-116(e), in an action to enforce provisions of the articles of
2 incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court
3 may award reasonable attorneys' fees to the prevailing party up to a maximum of two
4 thousand five hundred dollars (\$2,500), if recovery of attorneys' fees is allowed in the
5 declaration. A unit owner is not liable for attorneys' fees incurred by the association
6 relating to a matter described by notice under G.S. 47C-3-107.1 if the attorneys' fees are
7 incurred before the conclusion of the hearing under G.S. 47C-3-107.1. Attorneys' fees
8 may be collected by the association only if the unit owner is provided a written notice
9 that attorneys' fees and cost will be charged to the unit owner if the delinquency or
10 violation continues after a date certain, at least 10 days after the notice is received by
11 the unit owner."

12 **SECTION 14.** This act becomes effective October 1, 2005, and applies to
13 violations occurring on or after that date and fiscal years beginning on or after that date.