

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH10318-MQfqq-69 (03/13)

Short Title: Comm. Mgr. Licensing & Planned Comm. Act Chgs. (Public)

Sponsors: Representative Jordan.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE COMMUNITY ASSOCIATION PROPERTY MANAGERS BY
3 ESTABLISHING A LICENSING PROCEDURE WITH THE NORTH CAROLINA REAL
4 ESTATE COMMISSION AND TO MAKE VARIOUS CHANGES TO THE PLANNED
5 COMMUNITY ACT.

6 The General Assembly of North Carolina enacts:

7

8 **PART I. COMMUNITY ASSOCIATION PROPERTY MANAGEMENT ACT**

9 **SECTION 1.(a)** G.S. 93A-16(a) reads as rewritten:

10 "(a) There is hereby created a special fund to be known as the "Real Estate Education
11 and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate
12 Commission. The fund shall be used in the manner provided under this Article for the payment
13 of unsatisfied judgments where the aggrieved person or community association has suffered a
14 direct monetary loss by reason of certain acts committed by any real estate ~~broker~~broker,
15 community association property manager, or members of the community association's
16 executive board. The Commission may also expend money from the fund to create books and
17 other publications, courses, forms, seminars, and other programs and materials to educate
18 licensees and the public in real estate subjects. However, the Commission shall make no
19 expenditures from the fund for educational purposes if the expenditure will reduce the balance
20 of the fund to an amount less than two hundred thousand dollars (\$200,000)."

21 **SECTION 1.(b)** Chapter 93A of the General Statutes is amended by adding a new
22 Article to read:

23

"Article 7.

24

"Community Association Property Management.

25

"§ 93A-95. Title.

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This Article shall be known as the "Community Association Property Management Act."

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"§ 93A-96. Purpose.

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(a) The General Assembly finds that a community association as described under and
subject to Chapters 47C and 47F of the General Statutes that in whole or in part burdens or
pertains to real property in this State is deemed to be an interest in real estate, and as such shall
be governed by the laws of this State relating to real estate.

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(b) The General Assembly further finds that managing a community association by
collecting and handling assessments and other funds and managing property of the community
association are deemed to be real estate transactions. If a community association is not properly
managed, the improper management can adversely affect the real estate through foreclosure of
the community association member's property or bankruptcy of the community association.



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1 Improper management may also affect the rights of the community association members as
2 consumers and property owners. It is the purpose and intent of this Article to protect the public
3 from persons unqualified to provide community association management and from
4 unprofessional conduct by persons regulated pursuant to this Article.

5 **"§ 93A-97. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Commission. – The North Carolina Real Estate Commission.
- 8 (2) Community association. – Common interest ownership associations as
9 described in and subject to Chapters 47C and 47F of the General Statutes.
- 10 (3) Community association property management. – Services provided to a
11 community association for remuneration for any of the following so long as
12 the bylaws of the community association specifically provide that the
13 executive board of the community association is permitted to delegate the
14 authority:
 - 15 a. Collecting assessments and controlling and disbursing funds for a
16 community association.
 - 17 b. Assisting a community association in preparing budgets or other
18 financial documents.
 - 19 c. Advising and assisting a community association in obtaining
20 insurance.
 - 21 d. Assisting in the noticing and conducting meetings upon approval of
22 the members.

23 **"§ 93A-98. Rule-making authority.**

24 The Commission shall have the authority to administer this Article and adopt rules
25 consistent with the provisions of this Article and the laws of this State. The Commission may
26 prescribe the forms and procedures for submitting information to the Commission under this
27 Article.

28 **"§ 93A-99. License required.**

29 On or after October 1, 2015, it shall be unlawful for any person in this State to act as a
30 community association property manager, directly or indirectly engage in the business of
31 community association property management, hold oneself out to be a community association
32 property manager, or use the title "Licensed Community Association Property Manager"
33 without first obtaining a real estate broker license from the Commission as provided in Article
34 1 of this Chapter.

35 **"§ 93A-100. Limitations on brokers acting as managing agents.**

36 (a) The Commission shall not issue a license to provide community association
37 property management to a partnership, association, corporation, limited liability company, or
38 other business entity.

39 (b) A licensee shall not, within the practice of community association property
40 management, exercise control over any of the following:

- 41 (1) The reserves or investment accounts of a community association.
- 42 (2) An operating account of a community association unless (i) allowed under a
43 contract approved by the executive board of the community association and
44 (ii) duplicate financial statements concerning the account are sent by the
45 institution holding the account to the licensee and the community
46 association's executive board at a separate address.

47 (c) A licensee shall not give legal advice in violation of laws governing the practice of
48 law under Chapter 84 of the General Statutes.

49 (d) A licensee shall not give financial advice in violation of the laws governing certified
50 public accountants under Chapter 93 of the General Statutes.

51 **"§ 93A-101. Fidelity bond required.**

1 (a) Every community association property manager engaged in community association
2 property management shall at all times be covered by a fidelity bond or an insurance policy
3 complying with the provisions of this section.

4 (b) A fidelity bond required by this section shall be in an amount of at least twenty
5 thousand dollars (\$20,000) and comply with all of the following:

6 (1) Be written by an insurance company authorized to write fidelity bonds in
7 this State.

8 (2) Cover the community association property manager and all or a portion of
9 the employees and protect all or a portion of the community association
10 funds in the custody of the community association property manager.

11 (3) Provide that the insurance company issuing the bond may not cancel,
12 substantially modify, or refuse to renew the bond without giving 30 days'
13 prior written notice to the executive board of the community association,
14 except in the case of nonpayment of premiums, in which case 10 days' prior
15 written notice shall be given to the executive board.

16 (4) Contain any other provisions as may be required by the Commission.

17 (c) A licensee shall furnish the Commission proof of required bond coverage before
18 engaging in community association property management activities and upon license renewal if
19 the licensee continues to engage in community association property management activities.

20 **"§ 93A-102. Contracts for broker services.**

21 Every contract entered into by a licensed broker and a community association to provide
22 community association property management services shall be in writing and contain all of the
23 following conditions:

24 (1) The contract shall expire one year from the date the contract is entered into.
25 However, the contract may contain a clause to permit the contract to
26 continue on a month-to-month basis upon the expiration of the original term.

27 (2) The contract shall contain a clause allowing the community association to
28 cancel the contract for any reason by providing at least 60 days' notice to the
29 licensed broker.

30 (3) The contract shall provide for a notice of cancellation with proper notice
31 before the expiration of the contract and prior to contract renewal.

32 **"§ 93A-103. Registration of community associations.**

33 (a) Each community association shall register with the Commission annually. The
34 Commission shall provide the proper form for registration. To register, a community
35 association shall provide all of the following:

36 (1) The name and address of the community association.

37 (2) The names, addresses, and phone numbers of members of the community
38 association's executive board.

39 (3) The name and address of the agent for service of process.

40 (4) The name of the licensee broker who has control of the funds of the
41 community association.

42 (5) The name of the community association property manager's bond company
43 or insurance company.

44 (6) Any other information the Commission deems necessary.

45 (b) The registration form shall be accompanied by a certified check for a fee in the
46 amount of one hundred dollars (\$100.00) to cover the cost of registration, education, and
47 advising the community associations on matters related to the real estate functions of a
48 community association or any changes to the registration.

49 (c) The community association shall be required to make any corrections or
50 modifications to the original information provided in the registration to the Commission within
51 15 days from the date of registration.

1 **"§ 93A-104. Education required; community association board members.**

2 Within 60 days after election to a community association's executive board, a board
3 member shall complete a minimum of four hours of education on the laws related to
4 community associations under Chapters 47C and 47F of the General Statutes, the provisions of
5 this Article, rules adopted by the Commission, and any other matters the Commission deems
6 relevant. The education required by this section shall be provided by the Commission. The
7 community association shall pay to the Commission a fee for the course in the amount of
8 seventy-five dollars (\$75.00) for each individual board member taking the course. The
9 Commission may provide an online education course to meet the requirements of this section."

10 **SECTION 1.(d)** G.S. 47C-3-103 reads as rewritten:

11 **"§ 47C-3-103. Executive board members and officers.**

12 ...

13 (h) If a member elected to the executive board fails to comply with the educational
14 requirement provided in G.S. 93A-104, then the board member shall submit a written notice of
15 resignation to the board. The failure of a member to resign shall be deemed to be a breach of
16 fiduciary duty and the duty of good faith to the association and its members as provided in
17 subsection (a) of this section and the board member shall be subject to discipline pursuant to
18 G.S. 47C-3-107.1 and subsection (b) of this section."

19 **SECTION 1.(e)** G.S. 47F-3-103 reads as rewritten:

20 **"§ 47F-3-103. Executive board members and officers.**

21 ...

22 (g) If a member elected to the executive board fails to comply with the educational
23 requirement provided in G.S. 93A-104, then the board member shall submit a written notice of
24 resignation to the board. The failure of a member to resign shall be deemed to be a breach of
25 the duty of good faith to the association as provided in subsection (a) of this section and the
26 board member shall be subject to discipline pursuant to G.S. 47F-3-107.1 and subsection (b) of
27 this section."

28
29 **PART II. PLANNED COMMUNITY ACT CHANGES**

30 **SECTION 2.(a)** Article 3 of Chapter 47F of the General Statutes is amended by
31 adding the following new sections to read:

32 **"§ 47F-2-105. Contents of the declaration.**

33 (a) The declaration for a planned community shall contain all of the following:

- 34 (1) The name of the common interest community and the association and a
35 statement that the common interest community is a planned community.
- 36 (2) The name of every county in which any portion of the common interest
37 community is situated.
- 38 (3) A legal description of the real estate included in the common interest
39 community.
- 40 (4) A statement of the maximum number of lots that the declarant reserves the
41 right to create.
- 42 (5) A description of the boundaries of each lot created by the declaration,
43 including the lot's identifying number.
- 44 (6) A description of any limited common elements and any real estate that is or
45 must become a common element.
- 46 (7) A description of any development rights and other special declarant rights
47 reserved by the declarant, together with a legal description of the real estate
48 to which each of those rights applies and a time limit within which each of
49 those rights must be exercised.

- 1 (8) If any development right may be exercised with respect to different parcels
2 of real estate at different times, a statement to that effect together with all of
3 the following:
4 a. A statement fixing the boundaries of the affected parcels and the
5 order in which the affected parcels will be subjected to the exercise
6 of each development right or an affirmative statement that no
7 assurances are made by the declarant with respect to the exercise of
8 development rights.
9 b. A statement as to whether, if a development right is exercised in any
10 portion of the real estate subject to that development right, the
11 development right will be reserved and applied to the remaining
12 portions of the subject real estate.
13 (9) All conditions or limitations under which the rights described in subdivision
14 (7) of this subsection may be exercised or will lapse.
15 (10) The allocation to each lot of the allocated common interest expense and
16 votes as provided for under G.S. 47F-2-106.
17 (11) The recording information for all easements and licenses (i) appurtenant to
18 or included in the common interest community or (ii) to which any portion
19 of the common interest community may become subject by virtue of a
20 reservation in the declaration.
21 (12) Any authorization that entitles the association to establish and enforce
22 construction and design criteria and aesthetic standards.
23 (13) A provision allowing for members to adopt (i) rules for the establishment
24 and enforcement of construction and design criteria and aesthetic standards
25 and (ii) procedures for enforcement of those criteria and standards, including
26 approval of applications, establishment of a reasonable time for review of
27 applications, and the consequences of the association's failure to timely
28 respond.
29 (14) Any other matters the declarant deems appropriate and that are consistent
30 with this Chapter.

31 **"§ 47F-2-106. Allocation of common expense liabilities and votes.**

32 (a) The declaration shall allocate the common expense liabilities of the association and
33 a portion of the total association votes to each lot and shall state the formulas used to establish
34 those allocations. Allocation of expenses and votes to lots owned by the declarant shall be
35 equal to and established in the same manner as all other lots subject to the declaration.

36 (b) A declarant shall not use class voting for the purpose of evading any limitation
37 imposed on declarants by this Chapter. Lots owned by a declarant shall not constitute a class by
38 virtue of their ownership by the declarant.

39 (c) With the exception of minor variations from rounding, the sum of the common
40 expense liabilities allocated to all lots subject to the declaration shall equal one, if stated
41 fractionally or, if stated as a percentage, one hundred percent (100%)."

42 **SECTION 2.(b)** G.S. 47F-2-117 reads as rewritten:

43 **"§ 47F-2-117. Amendment of declaration.**

44 (a) Except in cases of amendments that may be executed by a declarant under the terms
45 of the declaration or by certain lot owners under G.S. 47F-2-118(b), and notwithstanding the
46 content of the declaration and any intention of the declarant, the declaration may be amended
47 only by affirmative vote or written agreement signed by lot owners of lots to which at least
48 sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority
49 the declaration specifies, but not exceeding eighty percent (80%), or by the declarant if
50 necessary for the exercise of any development right. The declaration may specify a smaller
51 number only if all of the lots are restricted exclusively to nonresidential use. To the extent the

1 procedures and requirements for amending the declaration conflict with the provisions of this
2 section, this section shall control.

3 ~~(b) No action to challenge the validity of an amendment adopted pursuant to this~~
4 ~~section may be brought more than one year after the amendment is recorded.~~

5 (c) Every amendment to the declaration shall be recorded in every county in which any
6 portion of the planned community is located and is effective only upon recordation.

7 (d) Any amendment passed pursuant to the provisions of this section or the procedures
8 provided for in the declaration are presumed valid and ~~enforceable~~enforceable, unless the
9 amendment conflicts with the provisions of this Chapter or violates G.S. 47F-1-104(a) or
10 G.S. 47F-2-103(c).

11"

12 **SECTION 2.(c)** G.S. 47F-2-120 reads as rewritten:

13 **"§ 47F-2-120. Master associations.**

14 (a) If the declaration for a planned community provides that any of the powers
15 described in G.S. 47F-3-102 are to be exercised by or may be delegated to a profit or nonprofit
16 corporation or unincorporated nonprofit association which exercises those or other powers on
17 behalf of one or more other planned communities or for the benefit of the lot owners of one or
18 more other planned communities, all provisions of this act applicable to lot owners' associations
19 apply to any such ~~corporation~~corporation or unincorporated association, except as modified by
20 this section.

21 (b) Unless a master association is acting in the capacity of an association described in
22 G.S. 47F-3-101, it may exercise the powers provided in G.S. 47F-3-102(a)(2) only to the extent
23 expressly permitted in the declarations of the associations that are part of the master association
24 or expressly described in the delegations of power from those associations to the master
25 association.

26 (c) If the declaration of an association provides that the executive board may delegate
27 certain powers to a master association, the members of the executive board shall have no
28 liability for the acts or omissions of the master association with respect to the powers delegated.

29 (d) The rights and responsibilities of lot owners with respect to the lot owners'
30 association provided in G.S. 47F-3-103, 47F-3-108, 47F-3-109, and 47F-3-110 apply to the
31 conduct of a master association, to the extent that the persons who elect the board of the master
32 association are lot owners within the meaning of this Chapter.

33 (e) Notwithstanding G.S. 47F-3-103 and regardless of whether the master association is
34 also an association within the meaning of G.S. 47F-3-101, the certificate of incorporation or
35 other instrument creating the master association and the declaration of each association shall
36 provide for the election of the executive board of the master association upon termination of
37 declarant control over a master association, in any of the following ways:

38 (1) All lot owners of all associations subject to the master association may elect
39 all members of the executive board for the master association.

40 (2) All members of the executive boards of all associations subject to the master
41 association may elect all members of the executive board for the master
42 association.

43 (3) All lot owners of each association subject to the master association may elect
44 members to fill specific seats on the executive board for the master
45 association.

46 (4) All members of the executive boards of all associations subject to the master
47 association may elect members to fill specific seats on the executive board
48 for the master association."

49 **SECTION 2.(d)** G.S. 47F-3-101 reads as rewritten:

50 **"§ 47F-3-101. Organization of owners' association.**

1 A lot owners' association shall be incorporated no later than the date the first lot in the
2 planned community is conveyed. The membership of the association at all times shall consist
3 exclusively of all the lot owners or, following termination of the planned community, of all
4 persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created
5 after the effective date of this Chapter shall be organized as a nonprofit ~~corporation~~ corporation
6 or as an unincorporated nonprofit association."

7 **SECTION 2.(e)** G.S. 47F-3-103 reads as rewritten:

8 "**§ 47F-3-103. Executive board members and officers.**

9 ...
10 (d) ~~The Subject to the provisions of subsection (d1) of this section, the declaration may~~
11 ~~provide for a period of declarant control of the association, during which period a declarant, or~~
12 ~~persons designated by the declarant, may appoint and remove the officers and members of the~~
13 ~~executive board. Notwithstanding the period provided in the declaration, a period of declarant~~
14 ~~control terminates no later than the earlier of (i) 120 days after conveyance of sixty-seven~~
15 ~~percent (67%) of the lots, including lots that may be created pursuant to a special declarant~~
16 ~~right, to lot owners other than the declarant; (ii) two years after a declarant has ceased to offer~~
17 ~~lots for sale in the ordinary course of business; or (iii) two years after any development right to~~
18 ~~add new lots was last exercised. If a declarant voluntarily surrenders the right to appoint and~~
19 ~~remove officers and members of the executive board before termination of the period of~~
20 ~~control, the declarant may require that certain actions of the association or executive board,~~
21 ~~specified by the declarant, must be approved by the declarant before they become effective.~~

22 (d1) Not later than 60 days after the conveyance of twenty-five percent (25%) of the lots,
23 including lots that may be created pursuant to a special declarant right, to lot owners other than
24 the declarant, at least one member, and not less than twenty-five percent (25%) of the executive
25 board, shall be elected by lot owners other than the declarant. Not later than 60 days after the
26 conveyance of fifty percent (50%) of the lots, including lots which may be created pursuant to a
27 special declarant right, to lot owners other than the declarant, not less than sixty-three percent
28 (63%) of the members of the executive board shall be elected by lot owners other than the
29 declarant.

30"

31 **SECTION 2.(f)** G.S. 47F-3-114 reads as rewritten:

32 "**§ 47F-3-114. Surplus funds.**

33 Unless otherwise provided in the declaration, any surplus funds of the association
34 remaining after payment of or provision for common ~~expenses, the funding of a reasonable~~
35 ~~operating expense surplus, expenses~~ and any prepayment of reserves shall be paid to the lot
36 owners in proportion to their common expense liabilities or credited to them to reduce their
37 future common expense assessments."

38 **SECTION 2.(g)** G.S. 47F-3-118 reads as rewritten:

39 "**§ 47F-3-118. Association records.**

40 (a) ~~The association shall keep financial records sufficiently detailed to enable the~~
41 ~~association to comply with this Chapter. All financial and other records, including records of~~
42 ~~meetings of the association and executive board, shall be made reasonably available for~~
43 ~~examination by any lot owner and the lot owner's authorized agents as required in the bylaws~~
44 ~~and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be~~
45 ~~maintained, the association shall keep accurate records of all cash receipts and expenditures and~~
46 ~~all assets and liabilities. In addition to any specific information that is required by the bylaws to~~
47 ~~be assembled and reported to the lot owners at specified times, the association shall make an~~
48 ~~annual income and expense statement and balance sheet available to all lot owners at no charge~~
49 ~~and within 75 days after the close of the fiscal year to which the information relates.~~
50 ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's~~
51 ~~books and records for the current or immediately preceding fiscal year may be required by a~~

1 ~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot~~
2 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
3 ~~duly called for that purpose retain all of the following:~~

- 4 (1) Detailed records of receipts and expenditures affecting the operation and
5 administration of the association and other appropriate accounting records.
- 6 (2) Minutes of all meetings of the lot owners and executive board, other than
7 executive sessions, a record of all actions taken by the lot owners or
8 executive board without a meeting, and a record of all actions taken by a
9 committee in place of the executive board on behalf of the association.
- 10 (3) The names of lot owners in a form that permits preparation of a list of the
11 names of all owners and the addresses at which the association
12 communicates with them, in alphabetical order showing the number of votes
13 each owner is entitled to cast.
- 14 (4) The association's original or restated organizational documents, the bylaws
15 and all amendments to them, and all rules of the association currently in
16 effect.
- 17 (5) All financial statements, audits, and tax returns of the association for the
18 preceding three years.
- 19 (6) A list of the names and addresses of the association's current executive board
20 members and officers.
- 21 (7) All financial and other records sufficiently detailed so as to enable the
22 association or lot owner to comply with a required disclosure statement.
- 23 (8) Copies of current contracts to which the association is a party.
- 24 (9) All records of executive board or committee actions to approve or deny
25 requests for design or architectural approval from unit owners.
- 26 (10) All ballots, proxies, and other records related to voting by unit owners for a
27 period of one year following the election, action, or vote to which they
28 relate.

29 (b) Subject to the provisions of subsections (c) and (d) of this section, all records
30 retained by the association, including those records required pursuant to Chapter 55A of the
31 General Statutes, shall be made available for inspection and copying by a lot owner or the lot
32 owner's authorized agent. A right to copy records under this section includes the right to receive
33 copies by photocopying or other means, including copies through an electronic transmission, if
34 available, upon request by the lot owner. An association is not obligated to compile or
35 synthesize information. Information provided pursuant to this section shall not be used for
36 commercial purposes. The association may charge a reasonable fee for providing copies of
37 records pursuant to this section.

38 (c) Upon failure of the association to provide access to records requested pursuant to
39 this section, the lot owner shall be entitled to receive ten dollars (\$10.00) for each day that
40 access to the records is denied. The fine imposed by this subsection shall constitute a claim for
41 damages enforceable by the lot owner pursuant to the procedures established under
42 G.S. 47F-3-107(d). A request made pursuant to this section shall be subject to all of the
43 following requirements:

- 44 (1) Access to the records shall be during reasonable business hours or at a
45 mutually convenient time and location.
- 46 (2) The requestor shall provide at least 10 days' written notice that reasonably
47 identifies the specific records requested.

48 (d) Records retained by an association may be withheld from inspection and copying to
49 the extent the documents contain any of the following:

- 50 (1) Personnel, salary, and medical records relating to specific individuals.

- 1 (2) Contracts, leases, and other commercial transactions to purchase or provide
2 goods or services, currently being negotiated.
3 (3) Information regarding existing or potential litigation or mediation,
4 arbitration, or administrative proceedings.
5 (4) Information regarding existing or potential matters involving federal, State,
6 or local administrative or other formal proceedings before a governmental
7 tribunal for enforcement of the declaration, bylaws, or rules.
8 (5) Communications with the association's attorney that are otherwise protected
9 by the attorney-client privilege or the attorney work-product doctrine.
10 (6) Information that, if disclosed, would violate a State or federal law.
11 (7) Records of an executive session of the executive board.
12 (8) Files pertaining to an individual lot owner other than those of the requesting
13 owner.

14 (e) In addition to any specific information that is required by the bylaws to be
15 assembled and reported to the lot owners at specified times, the association shall make an
16 annual income and expense statement and balance sheet available to all lot owners at no charge
17 and within 75 days after the close of the fiscal year to which the information relates.

18 (f) Notwithstanding the bylaws of the association, a more extensive compilation,
19 review, or audit of the association's books and records for the current or immediately preceding
20 fiscal year may be required by a vote of the majority of the executive board or by the
21 affirmative vote of a majority of the lot owners present and voting in person or by proxy at an
22 annual meeting or any special meeting duly called for that purpose.

23 ~~(b)~~(g) The association, upon written request, shall furnish to a lot owner or the lot owner's
24 authorized agents a statement setting forth the amount of unpaid assessments and other charges
25 against a lot. The statement shall be furnished within 10 business days after receipt of the
26 request and is binding on the association, the executive board, and every lot owner.

27 ~~(e)~~(h) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no
28 financial payments, including payments made in the form of goods and services, may be made
29 to any officer or member of the association's executive board or to a business, business
30 associate, or relative of an officer or member of the executive board, except as expressly
31 provided for in the bylaws or in payments for services or expenses paid on behalf of the
32 association which are approved in advance by the executive board."

33 **SECTION 2.(h)** G.S. 47F-3-116 reads as rewritten:

34 "...

35 (f) Except as provided in subsection (h) of this section, the association, acting through
36 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
37 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General
38 Statutes, if the assessment remains unpaid for 90 days or ~~more~~more; provided that the claim of
39 lien is against a lot that is not the primary residence of the owner. The association shall not
40 foreclose the claim of lien unless the executive board votes to commence the proceeding
41 against the specific lot.

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

- 46 (1) The association shall be deemed to have a power of sale for purposes of
47 enforcement of its claim of lien.

48 ...

49 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
50 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with
51 fines imposed by the association may only be enforced by judicial foreclosure, as provided in

1 Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy,
2 charge, or attempt to collect a service, collection, consulting, or administration fee from any lot
3 owner unless the fee is expressly allowed in the declaration, and any claim of lien securing a
4 debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in
5 Article 29A of Chapter 1 of the General Statutes. A claim of lien against a lot that is the
6 primary residence of the owner may only be enforced by judicial foreclosure, as provided in
7 Article 29A of Chapter 1 of the General Statutes."
8

9 **PART III. EFFECTIVE DATE**

10 **SECTION 3.** This act is effective when it becomes law. Nothing in this act shall be
11 construed as being applicable to or affecting any pending litigation.