

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH40401-MQx-14 (06/16)

Short Title: Const. Amendment/HOA Forecl. & Debt Setoff. (Public)

Sponsors: Representative R. Moore.

Referred to:

-A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROHIBIT HOMEOWNERS' ASSOCIATIONS FROM FORECLOSING ON REAL PROPERTY FOR UNPAID ASSOCIATION DUES, TO ALLOW HOMEOWNERS' ASSOCIATIONS TO OBTAIN JUDGMENTS FOR PAST-DUE ASSESSMENTS, AND TO ALLOW FOR SETOFF AGAINST STATE INCOME TAX RETURNS FOR PAST-DUE ASSESSMENTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 2 of Article X of the North Carolina Constitution is amended by adding a new subsection to read:

**"Sec. 2. Homestead exemptions.**

(1) Exemption from sale; exceptions. Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) Exemption for benefit of surviving spouse. If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

(5) Forced sale of homestead. A homestead located within a planned community and subject to the governance of a lot owners' association established by a covenant running with the land is protected from forced sale for the nonpayment of a lien assessed by the association."

**SECTION 2.** The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election to be conducted on November 3, 2015, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:



\* D R H 4 0 4 0 1 - M Q X - 1 4 \*

" [ ] FOR [ ] AGAINST

Constitutional amendment to prohibit homeowners' associations from foreclosing on real property to enforce payment of fees and dues to the association."

**SECTION 3.** If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act becomes effective upon certification and applies to forced sale actions commenced after that date.

**SECTION 4.** G.S. 47F-3-116 is repealed.

**SECTION 5.** Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

**§ 47F-3-116.1. Enforcement for sums due the association.**

(a) Any assessment attributable to a lot which remains unpaid for a period of 90 days or longer shall entitle the association to file an action in the appropriate division of the General Court of Justice in the county where the property is situated. Unless the declaration provides otherwise, the association is entitled to recover all fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration or mediation.

(b) No fewer than 30 days prior to initiating legal action, the association shall mail a notice and demand for payment of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the notice shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a notice to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

(c) The notice required in subsection (b) of this section shall set forth the name and address of the association, the name of the record owner of the lot at the time the notice is sent, a description of the lot, and the amount of the past due assessment. The first page of the notice shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS NOTICE EVIDENCES A PAST-DUE AMOUNT OWED TO THE ASSOCIATION. IF THE AMOUNT REMAINS UNPAID, THE ASSOCIATION MAY PURSUE LEGAL ACTION TO OBTAIN A JUDGMENT FOR THE AMOUNT OWED, INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE ASSOCIATION MAY ALSO BE ENTITLED TO CLAIM ALL OR A PORTION OF YOUR NORTH CAROLINA TAX REFUND TO SATISFY THE JUDGMENT."

The person signing the notice on behalf of the association shall attach to and file with the notice a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the notice on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c., d., or e., and (ii) by mailing a copy of the notice by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the notice on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once

1 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3), through G.S. 1A-1, Rule  
2 4(j)(9).

3 (d) The association shall be entitled to recover the reasonable attorneys' fees and costs it  
4 incurs in connection with the collection of any sums due. The association must make  
5 reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing  
6 address. The notice shall set out the outstanding balance due as of the date of the notice and  
7 state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the  
8 outstanding balance without any attorneys' fees and court costs. If the lot owner pays the  
9 outstanding balance within this period, then the lot owner shall have no obligation to pay  
10 attorneys' fees, costs, or expenses. The notice shall also inform the lot owner of the opportunity  
11 to contact a representative of the association to discuss a payment schedule for the outstanding  
12 balance, as provided in subsection (g) of this section, and shall provide the name and telephone  
13 number of the representative.

14 (e) Any judgment, decree, or order in any civil action relating to the collection of  
15 assessments shall include an award of costs and reasonable attorneys' fees for the prevailing  
16 party.

17 (f) An association shall not levy, charge, or attempt to collect a service, collection,  
18 consulting, or administration fee from any lot owner unless the fee is expressly allowed in the  
19 declaration.

20 (g) The association, acting through its executive board and in the board's sole  
21 discretion, may agree to allow payment of an outstanding balance in installments. Neither the  
22 association nor the lot owner is obligated to offer or accept any proposed installment schedule.  
23 Reasonable administrative fees and costs for accepting and processing installments may be  
24 added to the outstanding balance and included in an installment payment schedule. Reasonable  
25 attorneys' fees may be added to the outstanding balance and included in an installment schedule  
26 after the lot owner has been given notice, as required in subsection (d) of this section.

27 (h) Where the holder of a first mortgage or first deed of trust of record or other  
28 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first  
29 deed of trust, the purchaser and its heirs, successors, and assigns shall not be liable for the  
30 assessments against the lot which became due prior to the acquisition of title to the lot by the  
31 purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all  
32 the lot owners, including the purchaser, its heirs, successors, and assigns. For purposes of this  
33 subsection, the term "acquisition of title" means and refers to the recording of a deed conveying  
34 title or the time at which the rights of the parties are fixed following the foreclosure of a  
35 mortgage or deed of trust, whichever occurs first."

36 **SECTION 5.** G.S. 105A-1 reads as rewritten:

37 **"§ 105A-1. Purposes.**

38 The purpose of this Chapter is to establish as policy that all claimant agencies and the  
39 Department of Revenue shall cooperate in identifying debtors who owe money to the State or  
40 to a local government through their various agencies and who qualify for refunds from the  
41 Department of Revenue. It is also the intent of this Chapter that procedures be established for  
42 setting off against any refund the sum of any debt owed to the ~~State or to State~~, a local  
43 ~~government~~ government, or a planned community owners' association. Furthermore, it is the  
44 legislative intent that this Chapter be liberally construed so as to effectuate these purposes as  
45 far as legally and practically possible."

46 **SECTION 6.** G.S. 105A-2 reads as rewritten:

47 **"§ 105A-2. Definitions.**

48 The following definitions apply in this Chapter:

- 49 (1) Claimant agency. – ~~Either~~ Any of the following:  
50 a. A State agency.

- 1                   b.     A local agency acting through a clearinghouse or an organization  
2                   pursuant to G.S. 105A-3(b1).  
3                   c.     A planned community owners' association, created under Chapter  
4                   47F of the General Statutes.

5                   ...."

6                   **SECTION 7.** G.S. 105A-3(d) reads as rewritten:

7                   "(d)   Registration and Reports. – A State agency must register with the Department and  
8                   with the State Controller. Every State agency must report annually to the State Controller the  
9                   amount of debts owed to the agency for which the agency did not submit a claim for setoff and  
10                  the reason for not submitting the claim.

11                  A ~~clearinghouse~~planned community owners' association, a clearinghouse, or an  
12                  organization that submits debts on behalf of a local agency must register with the Department.  
13                  Once a clearinghouse registers with the Department under this subsection, no other  
14                  clearinghouse may register to submit debts for collection under this Chapter."

15                  **SECTION 8.** Article 1 of Chapter 105A of the General Statutes is amended by  
16                  adding a new section to read:

17                  "**§ 105A-8.1. Planned community owner's association notice, hearing, and decision.**

18                  (a)   Prerequisite. – A planned community owners' association may not submit a debt for  
19                  collection under this Chapter until it has obtained a judgment for past-due assessments pursuant  
20                  to Article 3 of Chapter 47F of the General Statutes.

21                  (b)   Notice. – In addition to the notice requirements of Article 3 of Chapter 47F of the  
22                  General Statutes, a planned community owners' association must send written notice to a debtor  
23                  that the association intends to submit the debt owed by the debtor for collection by setoff. The  
24                  notice must explain the basis for the association's claim to the debt, that the association intends  
25                  to apply the debtor's refund against the debt, and that a collection assistance fee of five dollars  
26                  (\$5.00) will be added to the debt if it is submitted for setoff. The notice must also inform the  
27                  debtor that the debtor has the right to contest the matter by filing a request for a hearing with  
28                  the executive board, must state the time limits and procedure for requesting the hearing, and  
29                  must state that failure to request a hearing within the required time will result in setoff of the  
30                  debt.

31                  (c)   Administrative Review. – A debtor who decides to contest a proposed setoff must  
32                  file a written request for a hearing with the planned community owners' association within 30  
33                  days after the date the association mails a notice of the proposed action to the debtor. A request  
34                  for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and  
35                  properly addressed. After holding the hearing, the executive board must issue a written decision  
36                  to the debtor.

37                  If the debtor disagrees with the decision of the executive board, the debtor may file a  
38                  petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The  
39                  petition must be filed within 30 days after the debtor receives a copy of the decision.  
40                  Notwithstanding the provisions of G.S. 105-241.21, a planned community owners' association  
41                  is considered an agency for purposes of contested cases and appeals under this Chapter.

42                  In a hearing under this section, an issue that has previously been litigated in a court  
43                  proceeding cannot be considered.

44                  (d)   Decision. – A decision made after a hearing under this section must determine  
45                  whether a debt is owed to the planned community owners' association and the amount of the  
46                  debt.

47                  (e)   Return of Amount Set Off. – If a planned community owners' association submits a  
48                  debt for collection under this Chapter without sending the notice required by subsection (b) of  
49                  this section, the association must send the taxpayer the entire amount set off plus the collection  
50                  assistance fees provided in G.S. 105A-13. Similarly, if an association submits a debt for  
51                  collection under this Chapter after sending the required notice but before final determination of

1 the debt and a decision finds that the association is not entitled to any part of the amount set off,  
2 the association must send the taxpayer the entire amount set off plus the collection assistance  
3 fees provided in G.S. 105A-13. That portion of the amount returned that reflects the collection  
4 assistance fees must be paid from the association's funds.

5 If an association submits a debt for collection under this Chapter after sending the required  
6 notice and the net proceeds collected that are credited to the association for the debt exceed the  
7 amount of the debt, the association must send the balance to the debtor. No part of the  
8 collection assistance fees provided in G.S. 105A-13 may be returned when a notice was sent  
9 and a debt is owed but the debt is less than the amount set off.

10 Interest accrues on the amount of a refund returned to a taxpayer under this subsection in  
11 accordance with G.S. 105-241.21. An association that returns a refund to a taxpayer under this  
12 subsection must pay from the association's funds any interest that has accrued since the fifth  
13 day after the Department mailed the notice of setoff to the taxpayer."

14 **SECTION 9.** G.S. 105A-12 reads as rewritten:

15 **"§ 105A-12. Priorities in claims to setoff.**

16 The Department has priority over all other claimant agencies for collection by setoff  
17 whenever it is a competing agency for a refund. State agencies have priority over local agencies  
18 agencies, and local agencies have priority over planned community owners' associations for  
19 collection by setoff. When there are multiple claims by State agencies other than the  
20 Department, the claims have priority based on the date each agency registered with the  
21 Department under G.S. 105A-3. When there are multiple claims by two or more organizations  
22 submitting debts on behalf of local agencies, the claims have priority based on the date each  
23 organization registered with the Department under G.S. 105A-3. When there are multiple  
24 claims among local agencies whose debts are submitted by the same organization, the claims  
25 have priority based on the date each local agency requested the organization to submit debts on  
26 its behalf. When there are multiple claims by two or more planned community owners'  
27 associations, the claims have priority based on the date each association registered with the  
28 Department under G.S. 105A-3."

29 **SECTION 10.** This act is effective when it becomes law.