

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 542
Committee Substitute Favorable 4/26/23
PROPOSED SENATE COMMITTEE SUBSTITUTE H542-PCS10494-TG-32

Short Title: HOA Revisions/Foreclosure Trustee Auctions.

(Public)

Sponsors:

Referred to:

April 3, 2023

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

...

(3) Hire and terminate managing agents and other employees, agents, and independent contractors. A contract between an association and a managing agent shall not exceed one year and shall contain no automatic renewal provision. A managing agent shall not be compensated in whole or in part based on the amount of fines collected by the managing agent on behalf of the association.

...

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements; provided, however, that in no event shall an



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1 association enforce any restriction on parking on a public street or public road
 2 for which the North Carolina Department of Transportation or local
 3 government has assumed responsibility for maintenance and repairs.

4 ...

5 (11) Impose charges for late payment of assessments, not to exceed the greater of
 6 twenty dollars (\$20.00) per month or ten percent (10%) of any assessment
 7 installment unpaid and, after notice and an opportunity to be heard, suspend
 8 privileges or services provided by the association (except rights of access to
 9 lots) during any period that assessments or other amounts due and owing to
 10 the association remain unpaid for a period of 30 days or longer, and levy
 11 reasonable fines not to exceed one hundred dollars
 12 (\$100.00)(G.S. 47C-3-107.1) for violations of the declaration, bylaws, and
 13 rules and regulations of the association. No fine shall be levied for violation
 14 of a provision restricting or prohibiting tutoring, educational lessons,
 15 academic lessons, music lessons, or swimming lessons provided in the owner's
 16 unit to a group of no more than five people at any one time, regardless of
 17 whether compensation is received for such lessons.

18 ...

19 (12a) Impose reasonable charges in connection with the preparation of statements
 20 of unpaid assessments, which must be furnished within 10 business days after
 21 receipt of the request, in an amount not to exceed two hundred dollars
 22 (\$200.00) per statement or request, and an additional expedite fee in an
 23 amount not to exceed one hundred dollars (\$100.00) if the request is made
 24 within 48 hours of closing, all of which charges may be collected by the
 25 association, its managers, or its agents. Except as provided in this subsection,
 26 an association shall not impose a charge for administrative tasks required upon
 27 the transfer of title to a unit. Violation of this subdivision constitutes an unfair
 28 and deceptive trade practice under G.S. 75-1.1.

29 (12b) Impose a reasonable charge for providing copies of records requested by a
 30 member, not to exceed the actual cost of photocopying the records.

31"

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

33 **"§ 47C-3-107.1. Procedures for fines and suspension of condominium privileges or services.**

34 Unless a specific procedure for the imposition of fines or suspension of condominium
 35 privileges or services is provided for in the declaration, a hearing shall be held before the
 36 executive board or an adjudicatory panel appointed by the executive board to determine if any
 37 unit owner should be fined or if condominium privileges or services should be suspended
 38 pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel
 39 appointed by the executive board shall be composed of members of the association who are not
 40 officers of the association or members of the executive board. The unit owner charged shall be
 41 given notice of the charge, opportunity to be heard and to present evidence, and notice of the
 42 decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars
 43 (\$100.00) may be imposed for the violation and without further hearing, for each day more than
 44 five days after the decision that the violation occurs. Such fines shall be assessments secured by
 45 liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or
 46 services should be imposed, the suspension may be continued without further hearing until the
 47 violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel
 48 to the full executive board by delivering written notice of appeal to the executive board within
 49 15 days after the date of the decision. The executive board may affirm, vacate, or modify the
 50 prior decision of the adjudicatory body. All fines collected pursuant to this section shall be
 51 remitted to the Civil Penalty and Forfeiture Fund."

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

2 "**§ 47C-3-116. Lien for sums due the association; enforcement.**

3 (a) Any assessment attributable to a unit which remains unpaid for a period of 30 days
4 or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
5 the clerk of superior court of the county in which the unit is located in the manner provided in
6 this section. For a debt consisting solely of fines imposed by the association, interest on unpaid
7 fines, or attorneys' fees incurred by the association solely associated with fines imposed by the
8 association, the association must file a claim of lien within 30 days after the date the fine was
9 imposed. Once filed, a claim of lien secures all sums due the association through the date filed
10 and any sums due to the association thereafter. Unless the declaration provides otherwise, fees,
11 charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107,
12 47C-3-107.1, and 47C-3-115 are subject to the claim of lien under this section as well as any
13 other sums due and payable to the association under the declaration, the provisions of this
14 Chapter, or as the result of an arbitration, mediation, or judicial decision.

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

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

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

31 (3) Attempt to notify the unit owner via telephone of the delinquent assessments
32 and the delivery details of the statement of the assessment amount due if the
33 owner has designated a telephone number to be used by the association for
34 communicating with the owner.

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

41 **"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE**
42 **LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH**
43 **JUDICIAL FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A**
44 **MORTGAGE UNDER NORTH CAROLINA LAW."**PROPERTY."

45 The person signing the claim of lien on behalf of the association shall attach to and file with
46 the claim of lien a certificate of service attesting to the attempt of service on the record owner,
47 which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy
48 of a summons and a complaint. If the actual service is not achieved, the person signing the claim
49 of lien on behalf of the association shall be deemed to have met the requirements of this
50 subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule
51 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first class mail, postage prepaid

1 to the physical address of the unit and the unit owner's address of record with the association,
2 and, if different, to the address for the unit owner shown on the county tax records and the county
3 real property records for the unit. The association shall also send the owner a copy of the claim
4 of lien and certificate of service by email if the owner has designated an email address as provided
5 in G.S. 55A-1-70(b). In the event that the owner of record is not a natural person, and actual
6 service is not achieved, the person signing the claim of lien on behalf of the association shall be
7 deemed to have met the requirements of this subsection if service has been attempted once
8 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).
9 Notwithstanding anything to the contrary in this Chapter, the association is not required to mail
10 a claim of lien to an address which is known to be a vacant unit or to a unit for which there is no
11 United States postal address. A lien for unpaid assessments is extinguished unless proceedings
12 to enforce the lien are instituted within three years after the filing of the claim of lien in the office
13 of the clerk of superior court. A lien for a debt consisting solely of fines imposed by the
14 association, interest on unpaid fines, or attorneys' fees incurred by the association solely
15 associated with fines imposed by the association is extinguished unless proceedings to enforce
16 the lien are instituted within 180 days after the filing of the claim of lien in the office of the clerk
17 of superior court.

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

23 (e) The association shall be entitled to recover the reasonable attorneys' fees and costs it
24 incurs in connection with the collection of any sums due. In an action to enforce a claim of lien
25 securing a debt consisting solely of fines imposed by the association, interest on unpaid fines, or
26 attorneys' fees incurred by the association solely associated with fines imposed by the
27 association, an award of attorneys' fees shall not exceed fifteen percent (15%) of the amount
28 recovered. A unit owner may not be required to pay attorneys' fees and court costs until the unit
29 owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs,
30 and expenses. The notice must be sent by first-class mail to the physical address of the unit and
31 the unit owner's address of record with the association and, if different, to the address for the unit
32 owner shown on the county tax records for the unit. The association must make reasonable and
33 diligent efforts to ensure that its records contain the unit owner's current mailing address.
34 Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice
35 under this subsection be mailed to an address which is known to be a vacant unit or a unit for
36 which there is no United States postal address. The notice shall set out the outstanding balance
37 due as of the date of the notice and state that the unit owner has 15 days from the mailing of the
38 notice by first-class mail to pay the outstanding balance without the attorneys' fees and court
39 costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall
40 have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the unit
41 owner of the opportunity to contact a representative of the association to discuss a payment
42 schedule for the outstanding balance as provided in subsection (i) of this section and shall provide
43 the name and telephone number of the representative.

44 (f) ~~Except as provided in subsection (h) of this section, the association, acting through~~
45 ~~the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust~~
46 ~~on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,~~
47 ~~if the assessment remains unpaid for 90 days or more. The association shall not foreclose the~~
48 ~~claim of lien unless the executive board votes to commence the proceeding against the specific~~
49 ~~unit. The following provisions and procedures shall be applicable to and complied with in every~~
50 ~~nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall~~

1 control to the extent they are inconsistent or in conflict with the provisions of Article 2A of
2 Chapter 45 of the General Statutes:

3 (1) ~~The association shall be deemed to have a power of sale for purposes of~~
4 ~~enforcement of its claim of lien.~~

5 (2) ~~The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of~~
6 ~~the General Statutes shall mean the association, except as provided otherwise~~
7 ~~in this Chapter.~~

8 (3) ~~The term "security instrument" as used in Article 2A of Chapter 45 of the~~
9 ~~General Statutes shall mean the claim of lien.~~

10 (4) ~~The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes~~
11 ~~shall mean the person or entity appointed by the association under subdivision~~
12 ~~(6) of this subsection.~~

13 (5) ~~After the association has filed a claim of lien and prior to the commencement~~
14 ~~of a nonjudicial foreclosure, the association shall give to the unit owner notice~~
15 ~~of the association's intention to commence a nonjudicial foreclosure to enforce~~
16 ~~its claim of lien. The notice shall contain the information required in G.S.~~
17 ~~45-21.16(c)(5a).~~

18 (6) ~~The association shall appoint a trustee to conduct the nonjudicial foreclosure~~
19 ~~proceeding and sale. The appointment of the trustee shall be included in the~~
20 ~~claim of lien or in a separate instrument filed with the office of the clerk of~~
21 ~~court in the county in which the unit is located as an exhibit to the notice of~~
22 ~~hearing. The association, at its option, may from time to time remove a trustee~~
23 ~~previously appointed and appoint a successor trustee by filing a Substitution~~
24 ~~of Trustee with the clerk of court in the foreclosure proceeding. Counsel for~~
25 ~~the association may be appointed by the association to serve as the trustee and~~
26 ~~may serve in that capacity as long as the unit owner does not contest the~~
27 ~~obligation to pay the amount of any sums due the association, or the validity,~~
28 ~~enforcement, or foreclosure of the claim of lien as provided in subdivision~~
29 ~~(12) of this subsection. Any trustee appointed pursuant to this subsection shall~~
30 ~~have the same fiduciary duties and obligations as a trustee in the foreclosure~~
31 ~~of a deed of trust.~~

32 (7) ~~If a valid debt, default, and notice to those entitled to receive notice under G.S.~~
33 ~~45-21.16(b) are found to exist, then the clerk of court shall authorize the sale~~
34 ~~of the property described in the claim of lien by the trustee.~~

35 (8) ~~If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,~~
36 ~~the unit owner satisfies the debt secured by the claim of lien and pays all~~
37 ~~expenses and costs incurred in filing and enforcing the association assessment~~
38 ~~lien, including, but not limited to, advertising costs, attorneys' fees, and the~~
39 ~~trustee's commission, then the trustee shall dismiss the foreclosure action and~~
40 ~~the association shall cancel the claim of lien of record in accordance with the~~
41 ~~provisions of G.S. 45-36.3. The unit owner shall have all rights granted under~~
42 ~~Article 4 of Chapter 45 of the General Statutes to ensure the association's~~
43 ~~satisfaction of the claim of lien.~~

44 (9) ~~Any person, other than the trustee, may bid at the foreclosure sale. Unless~~
45 ~~prohibited in the declaration or bylaws, the association may bid on the unit at~~
46 ~~a foreclosure sale directly or through an agent. If the association or its agent~~
47 ~~is the high bidder at the sale, the trustee shall allow the association to pay the~~
48 ~~costs and expenses of the sale and apply a credit against the sums due by the~~
49 ~~unit owner to the association in lieu of paying the bid price in full.~~

- 1 (10) ~~Upon the expiration of the upset bid period provided in G.S. 45-21.27, the~~
2 ~~trustee shall have full power and authority to execute a deed for the unit to the~~
3 ~~high bidder.~~
- 4 (11) ~~The trustee shall be entitled to a commission for services rendered which shall~~
5 ~~include fees, costs, and expenses reasonably incurred by the trustee in~~
6 ~~connection with the foreclosure whether or not a sale is held. Except as~~
7 ~~provided in subdivision (12) of this subsection, the trustee's commission shall~~
8 ~~be paid without regard to any limitations on compensation otherwise provided~~
9 ~~by law, including, without limitation, the provisions of G.S. 45-21.15.~~
- 10 (12) ~~If the unit owner does not contest the obligation to pay or the amount of any~~
11 ~~sums due the association or the validity, enforcement, or foreclosure of the~~
12 ~~claim of lien at any time after the expiration of the 15-day period following~~
13 ~~notice as required in subsection (b) of this section, then attorneys' fees and the~~
14 ~~trustee's commission collectively charged to the unit owner shall not exceed~~
15 ~~one thousand two hundred dollars (\$1,200), not including costs or expenses~~
16 ~~incurred. The obligation to pay and the amount of any sums due the~~
17 ~~association and the validity, enforcement, or foreclosure of the claim of lien~~
18 ~~remain uncontested as long as the unit owner does not dispute, contest, or raise~~
19 ~~any objection, defense, offset, or counterclaim as to the amount or validity of~~
20 ~~any portion of the sums claimed due by the association or the validity,~~
21 ~~enforcement, or foreclosure of the claim of lien. Any judgment, decree, or~~
22 ~~order in any action brought under this section shall include costs and~~
23 ~~reasonable attorneys' fees for the prevailing party.~~
- 24 (13) ~~Unit owners shall be deemed to have the rights and remedies available to~~
25 ~~mortgagors under G.S. 45-21.34.~~

26 The association, acting through the executive board, may enforce a claim of lien by judicial
27 foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes, provided that all of
28 the following requirements are met:

- 29 (1) The amount of the unpaid assessments exceeds two thousand five hundred
30 dollars (\$2,500) or 12 months of assessments, whichever is less.
- 31 (2) The debt secured by the claim of lien does not consist solely of fines imposed
32 by the association, interest on unpaid fines, or attorneys' fees incurred by the
33 association.
- 34 (3) The assessment remains unpaid for at least 90 days.
- 35 (4) The executive board votes to commence the proceeding against the specific
36 unit.

37 (g) ~~The provisions of subsection (f) of this section do not prohibit or prevent an~~
38 ~~association from pursuing judicial foreclosure of a claim of lien, from taking other actions to~~
39 ~~recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any~~
40 ~~judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of~~
41 ~~assessments shall include an award of costs and reasonable attorneys' fees for the prevailing~~
42 ~~party, which shall not be subject to the limitation provided in subdivision (f)(12) of this~~
43 ~~section.~~party.

44 (h) ~~A claim of lien securing a debt consisting solely of fines imposed by the association,~~
45 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
46 ~~imposed by the association may only be enforced by judicial foreclosure, as provided in Article~~
47 ~~29A of Chapter 1 of the General Statutes. In addition, an An association shall not levy, charge,~~
48 ~~or attempt to collect a service, collection, consulting, or administration fee from any unit owner~~
49 ~~unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt~~
50 ~~consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article~~
51 ~~29A of Chapter 1 of the General Statutes.~~declaration.

1"

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

3 "§ 47C-3-118. Association records.

4 ...

5 (a1) A unit owner or the unit owner's authorized agent is entitled to inspect and copy, at a
6 reasonable time and location specified by the association, any contract entered into by the
7 association authorizing a managing agent to exercise any of the powers granted to the association
8 pursuant to G.S. 47C-3-102, if the unit owner gives the association written notice of the demand
9 at least five business days before the date on which the unit owner wishes to inspect and copy.

10"

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

12 "§ 47F-3-102. Powers of owners' association.

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

15 ...

16 (3) Hire and discharge managing agents and other employees, agents, and
17 independent contractors. A contract between an association and a managing
18 agent shall not exceed one year and shall contain no automatic renewal
19 provision. A managing agent shall not be compensated in whole or in part
20 based on the amount of fines collected by the managing agent on behalf of the
21 association.

22 ...

23 (6) Regulate the use, maintenance, repair, replacement, and modification of
24 common ~~elements~~-elements; provided, however, that in no event shall an
25 association enforce any restriction on parking on a public street or public road
26 for which the North Carolina Department of Transportation or local
27 government has assumed responsibility for maintenance and repairs.

28 ...

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

37 ...

38 (13a) Impose reasonable charges in connection with the preparation of statements
39 of unpaid assessments, which must be furnished within 10 business days after
40 receipt of the request, in an amount not to exceed two hundred dollars
41 (\$200.00) per statement or request, and an additional expedite fee in an
42 amount not to exceed one hundred dollars (\$100.00) if the request is made
43 within 48 hours of closing, all of which charges may be collected by the
44 association, its managers, or its agents. Except as provided in this subsection,
45 an association shall not impose a charge for administrative tasks required upon
46 the transfer of title to a unit. Violation of this subdivision shall constitute an
47 unfair and deceptive trade practice under G.S. 75-1.1

48 (13b) Impose a reasonable charge for providing copies of records requested by a
49 member, not to exceed the actual cost of photocopying the records.

50"

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

1 "§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or
2 services.

3 Unless a specific procedure for the imposition of fines or suspension of planned community
4 privileges or services is provided for in the declaration, a hearing shall be held before the
5 executive board or an adjudicatory panel appointed by the executive board to determine if any
6 lot owner should be fined or if planned community privileges or services should be suspended
7 pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any
8 adjudicatory panel appointed by the executive board shall be composed of members of the
9 association who are not officers of the association or members of the executive board. The lot
10 owner charged shall be given notice of the charge, opportunity to be heard and to present
11 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to
12 exceed one hundred dollars (\$100.00) may be imposed for the violation and without further
13 hearing, for each day more than five days after the decision that the violation occurs. Such fines
14 shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of
15 planned community privileges or services should be imposed, the suspension may be continued
16 without further hearing until the violation or delinquency is cured. The lot owner may appeal the
17 decision of an adjudicatory panel to the full executive board by delivering written notice of appeal
18 to the executive board within 15 days after the date of the decision. The executive board may
19 affirm, vacate, or modify the prior decision of the adjudicatory body. All fines collected pursuant
20 to this section shall be remitted to the Civil Penalty and Forfeiture Fund."

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

22 "§ 47F-3-116. Lien for sums due the association; enforcement.

23 (a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or
24 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the
25 clerk of superior court of the county in which the lot is located in the manner provided in this
26 section. For a debt consisting solely of fines imposed by the association, interest on unpaid fines,
27 or attorneys' fees incurred by the association solely associated with fines imposed by the
28 association, the association must file a claim of lien within 30 days after the date the fine was
29 imposed. Once filed, a claim of lien secures all sums due the association through the date filed
30 and any sums due to the association thereafter. Unless the declaration provides otherwise, fees,
31 charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107,
32 47F-3-107.1, and 47F-3-115 are subject to the claim of lien under this section as well as any other
33 sums due and payable to the association under the declaration, the provisions of this Chapter, or
34 as the result of an arbitration, mediation, or judicial decision.

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

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

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

1 (3) Attempt to notify the lot owner via telephone of the delinquent assessments
2 and the delivery details of the statement of the assessment amount due if the
3 owner has designated a telephone number to be used by the association for
4 communicating with the owner.

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

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

15 The person signing the claim of lien on behalf of the association shall attach to and file with
16 the claim of lien a certificate of service attesting to the attempt of service on the record owner,
17 which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy
18 of a summons and a complaint. If the actual service is not achieved, the person signing the claim
19 of lien on behalf of the association shall be deemed to have met the requirements of this
20 subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule
21 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid
22 to the physical address of the lot and the lot owner's address of record with the association, and,
23 if different, to the address for the lot owner shown on the county tax records and the county real
24 property records for the lot. The association shall also send the owner a copy of the claim of lien
25 and certificate of service by email if the owner has designated an email address as provided in
26 G.S. 55A-1-70(b). In the event that the owner of record is not a natural person, and actual service
27 is not achieved, the person signing the claim of lien on behalf of the association shall be deemed
28 to have met the requirements of this subsection if service has been attempted once pursuant to
29 the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).
30 Notwithstanding anything to the contrary in this Chapter, the association is not required to mail
31 a claim of lien to an address which is known to be a vacant lot on which no dwelling has been
32 constructed or to a lot for which there is no United States postal address. A lien for unpaid
33 assessments is extinguished unless proceedings to enforce the lien are instituted within three
34 years after the filing of the claim of lien in the office of the clerk of superior court. A lien for a
35 debt consisting solely of fines imposed by the association, interest on unpaid fines, or attorneys'
36 fees incurred by the association solely associated with fines imposed by the association is
37 extinguished unless proceedings to enforce the lien are instituted within 180 days after the filing
38 of the claim of lien in the office of the clerk of superior court.

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

44 (e) The association shall be entitled to recover the reasonable attorneys' fees and costs it
45 incurs in connection with the collection of any sums due. In an action to enforce a claim of lien
46 securing a debt consisting solely of fines imposed by the association, interest on unpaid fines, or
47 attorneys' fees incurred by the association solely associated with fines imposed by the
48 association, an award of attorneys' fees shall not exceed fifteen percent (15%) of the amount
49 recovered. A lot owner may not be required to pay attorneys' fees and court costs until the lot
50 owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs,
51 and expenses. The notice must be sent by first-class mail to the physical address of the lot and

1 the lot owner's address of record with the association and, if different, to the address for the lot
2 owner shown on the county tax records for the lot. The association must make reasonable and
3 diligent efforts to ensure that its records contain the lot owner's current mailing address.
4 Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice
5 under this subsection be mailed to an address which is known to be a vacant lot on which no
6 dwelling has been constructed or a lot for which there is no United States postal address. The
7 notice shall set out the outstanding balance due as of the date of the notice and state that the lot
8 owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance
9 without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within
10 this period, then the lot owner shall have no obligation to pay attorneys' fees, costs, or expenses.
11 The notice shall also inform the lot owner of the opportunity to contact a representative of the
12 association to discuss a payment schedule for the outstanding balance, as provided in subsection
13 (i) of this section, and shall provide the name and telephone number of the representative.

14 (f) ~~Except as provided in subsection (h) of this section, the association, acting through~~
15 ~~the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust~~
16 ~~on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,~~
17 ~~if the assessment remains unpaid for 90 days or more. The association shall not foreclose the~~
18 ~~claim of lien unless the executive board votes to commence the proceeding against the specific~~
19 ~~lot. The association, acting through the executive board, may enforce a claim of lien by judicial~~
20 ~~foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes, provided that all of~~
21 ~~the following requirements are met:~~

- 22 (1) The amount of the unpaid assessments exceeds two thousand five hundred
23 dollars (\$2,500) or 12 months of assessments, whichever is less.
- 24 (2) The debt secured by the claim of lien does not consist solely of fines imposed
25 by the association, interest on unpaid fines, or attorneys' fees incurred by the
26 association.
- 27 (3) The assessment remains unpaid for at least 90 days.
- 28 (4) The executive board votes to commence the proceeding against the specific
29 lot.

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

- 34 (1) ~~The association shall be deemed to have a power of sale for purposes of~~
35 ~~enforcement of its claim of lien.~~
- 36 (2) ~~The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of~~
37 ~~the General Statutes shall mean the association, except as provided otherwise~~
38 ~~in this Chapter.~~
- 39 (3) ~~The term "security instrument" as used in Article 2A of Chapter 45 of the~~
40 ~~General Statutes shall mean the claim of lien.~~
- 41 (4) ~~The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes~~
42 ~~shall mean the person or entity appointed by the association under subdivision~~
43 ~~(6) of this subsection.~~
- 44 (5) ~~After the association has filed a claim of lien and prior to the commencement~~
45 ~~of a nonjudicial foreclosure, the association shall give to the lot owner notice~~
46 ~~of the association's intention to commence a nonjudicial foreclosure to enforce~~
47 ~~its claim of lien. The notice shall contain the information required in G.S.~~
48 ~~45-21.16(c)(5a).~~
- 49 (6) ~~The association shall appoint a trustee to conduct the nonjudicial foreclosure~~
50 ~~proceeding and sale. The appointment of the trustee shall be included in the~~
51 ~~claim of lien or in a separate instrument filed with the clerk of court in the~~

1 county in which the planned community is located as an exhibit to the notice
2 of hearing. The association, at its option, may from time to time remove a
3 trustee previously appointed and appoint a successor trustee by filing a
4 Substitution of Trustee with the clerk of court in the foreclosure proceeding.
5 Counsel for the association may be appointed by the association to serve as
6 the trustee and may serve in that capacity as long as the lot owner does not
7 contest the obligation to pay or the amount of any sums due the association,
8 or the validity, enforcement, or foreclosure of the claim of lien, as provided in
9 subdivision (12) of this subsection. Any trustee appointed pursuant to this
10 subsection shall have the same fiduciary duties and obligations as a trustee in
11 the foreclosure of a deed of trust.

12 (7) ~~If a valid debt, default, and notice to those entitled to receive notice under G.S.
13 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale
14 of the property described in the claim of lien by the trustee.~~

15 (8) ~~If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,
16 the lot owner satisfies the debt secured by the claim of lien and pays all
17 expenses and costs incurred in filing and enforcing the association assessment
18 lien, including, but not limited to, advertising costs, attorneys' fees, and the
19 trustee's commission, then the trustee shall dismiss the foreclosure action and
20 the association shall cancel the claim of lien of record in accordance with the
21 provisions of G.S. 45-36.3. The lot owner shall have all rights granted under
22 Article 4 of Chapter 45 of the General Statutes to ensure the association's
23 satisfaction of the claim of lien.~~

24 (9) ~~Any person, other than the trustee, may bid at the foreclosure sale. Unless
25 prohibited in the declaration or bylaws, the association may bid on the lot at a
26 foreclosure sale directly or through an agent. If the association or its agent is
27 the high bidder at the sale, the trustee shall allow the association to pay the
28 costs and expenses of the sale and apply a credit against the sums due by the
29 lot owner to the association in lieu of paying the bid price in full.~~

30 (10) ~~Upon the expiration of the upset bid period provided in G.S. 45-21.27, the
31 trustee shall have full power and authority to execute a deed for the lot to the
32 high bidder.~~

33 (11) ~~The trustee shall be entitled to a commission for services rendered which shall
34 include fees, costs, and expenses reasonably incurred by the trustee in
35 connection with the foreclosure, whether or not a sale is held. Except as
36 provided in subdivision (12) of this subsection, the trustee's commission shall
37 be paid without regard to any limitations on compensation otherwise provided
38 by law, including, without limitation, the provisions of G.S. 45-21.15.~~

39 (12) ~~If the lot owner does not contest the obligation to pay the amount of any sums
40 due the association or the validity, enforcement, or foreclosure of the claim of
41 lien at any time after the expiration of the 15-day period following notice as
42 required in subsection (b) of this section, then attorneys' fees and the trustee's
43 commission collectively charged to the lot owner shall not exceed one
44 thousand two hundred dollars (\$1,200), not including costs or expenses
45 incurred. The obligation to pay and the amount of any sums due the
46 association and the validity, enforcement, or foreclosure of the claim of lien
47 remain uncontested as long as the lot owner does not dispute, contest, or raise
48 any objection, defense, offset, or counterclaim as to the amount or validity of
49 any portion of the sums claimed due by the association or the validity,
50 enforcement, or foreclosure of the claim of lien. Any judgment, decree, or~~

1 order in any action brought under this section shall include costs and
2 reasonable attorneys' fees for the prevailing party.

3 (13) ~~Lot owners shall be deemed to have the rights and remedies available to~~
4 ~~mortgagors under G.S. 45-21.34.~~

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

12 (h) ~~A claim of lien securing a debt consisting solely of fines imposed by the association,~~
13 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
14 ~~imposed by the association may only be enforced by judicial foreclosure, as provided in Article~~
15 ~~29A of Chapter 1 of the General Statutes. In addition, an An association shall not levy, charge,~~
16 ~~or attempt to collect a service, collection, consulting, or administration fee from any lot owner~~
17 ~~unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt~~
18 ~~consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article~~
19 ~~29A of Chapter 1 of the General Statutes.~~declaration.

20"

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

22 "**§ 47F-3-118. Association records.**

23 ...

24 (a1) A lot owner or the lot owner's authorized agent is entitled to inspect and copy, at a
25 reasonable time and location specified by the association, any contract entered into by the
26 association authorizing a managing agent to exercise any of the powers granted to the association
27 pursuant to G.S. 47F-3-102, if the lot owner gives the association written notice of the demand
28 at least five business days before the date on which the lot owner wishes to inspect and copy.

29"

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

31 "Article 31A.

32 "Civil Penalty and Forfeiture Fund.

33 "**§ 115C-457.1. Creation of Fund; administration.**

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

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

42 "**§ 115C-457.2. Remittance of moneys to the Fund.**

43 (a) The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are
44 collected by a State agency and that the General Assembly is authorized to place in a State fund
45 pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State
46 Budget and Management by the officer having custody of the funds within 10 days after the close
47 of the calendar month in which the revenues were received or collected. Notwithstanding any
48 other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear
49 proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil
50 fines collected under authority conferred by the State, diminished only by the actual costs of
51 collection, not to exceed twenty percent (20%) of the amount collected. The collection cost

1 percentage to be used by a State agency shall be established and approved by the Office of State
2 Budget and Management on an annual basis based upon the computation of actual collection
3 costs by each agency for the prior fiscal year.

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

8"

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

10 **"§ 161-14. Registration of instruments.**

11 ...

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

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

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

31"

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

33 **"§ 45-21.4. Place of sale of real property.**

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

36 (b) A sale of a single tract of real property situated in two or more counties may be held
37 in any one of the counties in which any part of the tract is situated. As used in this section, a
38 "single tract" means any tract which has a continuous boundary, regardless of whether parts
39 thereof may have been acquired at different times or from different persons, or whether it may
40 have been subdivided into other units or lots, or whether it is sold as a whole or in parts.

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

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

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

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

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

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

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

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

21 "**§ 45-21.23. Time of sale.**

22 A sale shall begin at the time designated in the notice of sale or as soon thereafter as
23 practicable, but not later than ~~one hour~~three hours after the time fixed therefor unless it is delayed
24 by other sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and
25 4:00 P.M. on any day when the clerk's office is normally open for transactions."

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

28 "**§ 45-21.25A. Bids placed remotely.**

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

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

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

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