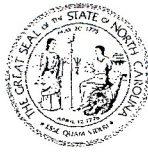


ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H542-ATG-81 [v.12]

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Amends Title [YES]
Third Edition

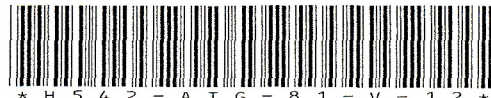
Date _____, 2023

Senator Johnson
~~Sawrey~~

1 moves to amend the bill on page 1, lines 6-7, by rewriting the lines to read:
2 "OF THE DELINQUENCY AND POTENTIAL FILING OF A CLAIM OF LIEN, TO
3 REQUIRE";

4
5 and on page 1, lines 28-32, by rewriting the lines to read:
6 "independent contractors. A contract between an association and a managing
7 agent shall not have a term exceeding one year and shall not contain an
8 automatic renewal provision that requires the association to give notice of
9 nonrenewal more than 30 days prior to the contract's anniversary date. Any
10 contract with a managing agent that is automatically renewed shall be
11 terminable by the association for any reason upon 60 days' notice. A managing
12 agent shall not be compensated in whole or in part based on the amount of
13 finest collected by the managing agent on behalf of the association and shall
14 not collect from the association or a unit owner any fee in connection with its
15 collection of a fine imposed by the association.";

16
17 and on page 1, line 35, through page 2, line 3, by rewriting the lines to read:
18 "common ~~elements~~ elements; provided, however, that in the absence of an
19 express authorization in the declaration, an association shall not enforce any
20 restriction on parking of a personal vehicle on a public street or public road
21 for which the North Carolina Department of Transportation or local
22 government has assumed responsibility for maintenance and repairs, unless
23 the authority to regulate such parking has been expressly delegated to the
24 association by the Department of Transportation or local government under
25 terms prescribing the manner in which the association may exercise that
26 authority. Any such delegation shall be valid for a period not to exceed five
27 years, at which time the association must reapply to the delegating entity. As
28 used in this subdivision, "personal vehicle" means an automobile with a gross
29 weight of less than 26,001 pounds that is used for personal pleasure, travel, or
30 commuting to and from a place of work, and does not include a motor home
31 or self-propelled recreational vehicle, or an automobile that is otherwise used
32 primarily in connection with any commercial endeavor or business.";



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1
2 and on page 2, lines 19-28, by rewriting the lines to read:

3 "(12a) Impose reasonable charges in connection with the preparation of a lender's
4 questionnaire or certification or statements a statement of unpaid assessments,
5 which must be furnished within 10 business-days after receipt of the request,
6 in an amount not to exceed two hundred dollars (\$200.00) per statement or
7 request, item requested, and an additional expedite-expedited fee in an amount
8 not to exceed one hundred dollars (\$100.00) if the item is requested to be
9 furnished less than 10 days after request is made within 48 hours of closing,
10 all of which receipt of the request. These charges may be collected by the
11 association, its managers, or its agents. Any charge for preparation of a
12 lender's questionnaire or certification shall be paid by the requesting party.
13 Neither the association nor its managing agent shall impose any charge upon
14 a unit owner or a prospective purchaser of a unit in connection with the
15 conveyance of a unit unless the charge is authorized in this subdivision.
16 Violation of this subdivision by an association or by its managing agent shall
17 constitute an unfair and deceptive trade practice under G.S. 75-1.1.";
18

19 and on page 2, line 31, by rewriting the line to read:

20 "
21 (14a) Exercise any authority granted to it under the declaration to approve or
22 disapprove any proposed changes to a unit or limited common element. In
23 exercising such authority, the association shall provide a fair, reasonable, and
24 expeditious procedure for making its decision, which procedure shall be set
25 forth in the association's governing documents. The procedures shall state the
26 maximum time for issuance of any decision on a proposal or a request for
27 reconsideration. At a minimum, a decision shall be made within 90 days after
28 the initial submission of the proposal or submission of any additional
29 information or changes to the proposal requested by the association in
30 response to the initial submission. A decision shall be in writing, shall be made
31 in good faith, and may not be unreasonable, arbitrary, or capricious. If the
32 proposal is disapproved, the decision shall include both an explanation of why
33 the proposal is disapproved and a description of the procedure for
34 reconsideration of the decision by the executive board.
35

36 ";

37 and on page 2, lines 42-44, by rewriting the lines to read:

38 "decision. A written notice of hearing shall be sent to the unit owner as provided in
39 G.S. 47C-3-116(e) not less than 10 days prior to the scheduled hearing date. The notice of hearing
40 shall specify the date, time, and place of the hearing and shall include a general description of
41 each alleged violation and the action, if any, to cure each alleged violation. The unit owner shall
42 be given an opportunity to be heard and to present evidence at the hearing. A written notice of
43 the decision specifying each violation verified by the evidence and the action, if any, to cure each

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1 verified violation shall be sent to the unit owner as provided in G.S. 47C-3-116(e). If it is decided
2 that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed
3 for the violation and without further hearing, for each day more than five days after the decision
4 that the violation ~~occurs-occurs~~, up to a maximum fine of two thousand five hundred dollars
5 (\$2,500). Such fines shall be assessments secured by";

6
7 and on page 3, lines 3-14, by rewriting the lines to read:

8 "(a) Any assessment attributable to a unit which remains unpaid for a period of 30 days
9 or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
10 the clerk of superior court of the county in which the unit is located in the manner provided in
11 this section. A claim of lien securing a debt consisting of fines or fine-related charges shall be
12 filed separately from a claim of lien securing other sums owed to the association and shall be
13 filed within 90 days after the date the fine was imposed. As used in this section, "fines or
14 fine-related charges" means fines imposed by the association, interest on unpaid fines, or
15 attorneys' fees incurred by the association related to fines imposed by the association. Once filed,
16 a claim of lien secures all sums due the association through the date filed and any sums due to
17 the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges
18 and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115
19 are subject to the ~~claim-claims~~ of lien provided for under this section as well as any other sums
20 due and payable to the association under the declaration, the provisions of this Chapter, or as the
21 result of an arbitration, mediation, or judicial decision.";

22
23 and on page 3, lines 17-18, by rewriting the lines to read:

24 "ensure that its records contain the unit owner's current ~~physical mailing address-address and~~
25 current electronic mailing address. No fewer than 15 days prior to filing";

26
27 and on page 3, lines 31-34, by deleting those lines in their entirety;

28
29 and on page 3, lines 43-44, by rewriting the lines to read:

30 "~~FORECLOSURE ENFORCEMENT AGAINST YOU AND YOUR PROPERTY IN LIKE~~
31 ~~MANNER AS A MORTGAGE AS PERMITTED UNDER NORTH CAROLINA LAW."~~";

32
33 and on page 4, lines 13-17, by rewriting the lines to read:

34 "of the clerk of superior court. A lien securing a debt consisting of fines or fine-related charges
35 is extinguished unless proceedings to enforce the lien are instituted within one year after the filing
36 of the claim of lien in the office of the clerk of superior court.";

37
38 and on page 4, lines 23-43, by rewriting the lines to read:

39 "(e) Attorneys' fees. _____

40 (1) The association shall be entitled to recover the reasonable attorneys' fees and
41 costs it incurs in connection with the collection of any sums ~~due-due~~, except
42 as otherwise provided in subdivision (2) of this subsection.

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- 1 (2) In an action to enforce a claim of lien securing a debt consisting of fines or
2 fine-related charges, upon findings by the court (i) that there was an
3 unwarranted refusal by the unit owner to negotiate or pay the fines or
4 fine-related charges and (ii) that the amount of damages recovered exceeded
5 the highest offer made by the unit owner no later than 90 days before the
6 commencement of trial, the presiding judge may, in the judge's discretion,
7 allow reasonable attorneys' fees to the duly licensed attorneys representing the
8 association obtaining a judgment for damages in said suit, in an amount not to
9 exceed ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount
10 recovered, whichever is greater, said attorneys' fees to be taxed as a part of the
11 court costs. When making an award of attorneys' fees under this subdivision,
12 the judge shall issue a written order including findings of fact detailing the
13 factual basis for the finding of an unwarranted refusal to negotiate or pay the
14 debt secured by the claim of lien, and setting forth the amount of the highest
15 offer made by the unit owner 90 days or more before the commencement of
16 trial, and the amount of damages recovered, as well as the factual basis and
17 amount of any such attorneys' fees to be awarded.
- 18 (3) A unit owner may not be required to pay attorneys' fees and court costs until
19 the unit owner is notified in writing of the association's intent to seek payment
20 of attorneys' fees, costs, and expenses. The notice must be sent by first-class
21 mail to the physical address of the unit and the unit owner's address of record
22 with the association and, if different, to the address for the unit owner shown
23 on the county tax records for the unit. The association must make reasonable
24 and diligent efforts to ensure that its records contain the unit owner's current
25 mailing address. Notwithstanding anything to the contrary in this Chapter,
26 there shall be no requirement that notice under this subsection be mailed to an
27 address which is known to be a vacant unit or a unit for which there is no
28 United States postal address. The notice shall set out the outstanding balance
29 due as of the date of the notice and state that the unit owner has 15 days from
30 the mailing of the notice by first-class mail to pay the outstanding balance
31 without the attorneys' fees and court costs. If the unit owner pays the
32 outstanding balance within this period, then the unit owner shall have no
33 obligation to pay attorneys' fees, costs, or expenses. The notice shall also
34 inform the unit owner of the opportunity to contact a representative of the
35 association to discuss a payment schedule for the outstanding balance as
36 provided in subsection (i) of this section and shall provide the name and
37 telephone number of the representative.";

38
39 and on page 4, line 44, through page 6, line 36, by rewriting the lines to read:

40 "(f) Except as provided in subsection (h) of this section, the association, acting through
41 the executive board, may foreclose a claim of lien securing a debt consisting of sums due the
42 association other than fines or fine-related charges in like manner as a mortgage or deed of trust
43 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,

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1 if the assessment remains unpaid delinquency has continued for 90-180 days or more. The
2 association shall not foreclose the claim of lien unless the executive board votes to commence
3 the proceeding against the specific unit. The following provisions and procedures shall be
4 applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien,
5 and these provisions and procedures shall control to the extent they are inconsistent or in conflict
6 with the provisions of Article 2A of Chapter 45 of the General Statutes:

- 7 ...
- 8 (5) After the association has filed a claim of lien and prior to the commencement
9 of a nonjudicial foreclosure, the association shall give to the unit owner notice
10 of the association's intention to commence a nonjudicial foreclosure to enforce
11 its claim of lien. The notice shall contain the information required in
12 G.S. 45-21.16(c)(5a), G.S. 45-21.16(c)(5) and G.S. 45-21.16(c)(5a) and shall
13 specifically reference the unit owner's right of redemption provided under
14 subdivision (8) of this subsection. The notice shall be sent by first-class mail
15 to the physical address of the unit and the unit owner's address of record with
16 the association and, if different, to the address for the unit owner shown on
17 the county tax records for the unit.
- 18 (5a) The notice of hearing required pursuant to G.S. 45-21.16(a) shall be
19 accompanied by the association's certification of the actions it has taken to
20 give the owner notice of delinquent assessments in compliance with
21 subsection (b) of this section.
- 22 (5b) At the commencement of the hearing, the clerk shall inquire as to whether the
23 owner occupies the unit as his or her principal residence. If it appears that the
24 owner does currently occupy the unit as a principal residence, the clerk shall
25 further inquire as to the efforts the association has made to communicate with
26 the owner and to attempt to resolve the matter voluntarily before the
27 foreclosure proceeding. The clerk's inquiry shall not be required if the
28 association has submitted, at or before the hearing, an affidavit briefly
29 describing any efforts that have been made to resolve the default with the
30 owner and the results of any such efforts.
- 31 (5c) The clerk shall order the hearing continued if the clerk finds that there is good
32 cause to believe that additional time or additional measures have a reasonable
33 likelihood of resolving the delinquency without foreclosure. In determining
34 whether to continue the hearing, the clerk may consider (i) whether the
35 association has offered the debtor an opportunity to resolve the foreclosure
36 under a payment schedule pursuant to subsection (i) of this section, (ii)
37 whether the association has engaged in actual responsive communication with
38 the owner, including telephone conferences or in-person meetings with the
39 owner or other actual two-party communications, (iii) whether the owner has
40 indicated that he or she has the intent and ability to resolve the delinquency
41 by making future payments under a payment plan, and (iv) whether the
42 initiation or continuance of good-faith voluntary resolution efforts
43 between the parties may resolve the matter without a foreclosure sale. Where

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1 good cause exists to continue the hearing, the clerk shall order the hearing
2 continued to a date and time certain not more than 90 days from the date
3 scheduled for the original hearing. Nothing in this part shall limit the authority
4 of the clerk to continue a hearing for other good cause shown.

5 ";

6
7 and on page 6, lines 37-51, by rewriting the lines to read:

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

15 (h) A claim of lien securing a debt consisting ~~solely of fines imposed by the association,~~
16 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
17 ~~imposed by the association or fine-related charges~~ may only be enforced by ~~judicial foreclosure,~~
18 ~~as provided in Article 29A of Chapter 1 of the General Statutes, the filing of a civil action seeking~~
19 a judgment. In addition, an association shall not levy, charge, or attempt to collect a service,
20 collection, consulting, or administration fee from any unit owner unless the fee is expressly
21 allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees
22 may only be enforced by ~~judicial foreclosure, as provided in Article 29A of Chapter 1 of the~~
23 ~~General Statutes, the filing of a civil action seeking a judgment.~~ Liens arising as a result of the
24 entry of a judgment in favor of the association in any such civil action shall relate back and be
25 effective as of the date the claim of lien was filed.";

26
27 and on page 7, line 9, by rewriting the line to read:

28 "at least five business days before the date on which the unit owner wishes to inspect and copy
29 and the request satisfies the conditions for inspection set forth in G.S. 55A-16-02(c). A demand
30 to inspect made pursuant to this subsection shall be presumed to have been made in good faith
31 and for a proper purpose. In any action to compel the inspection and copying of documents, the
32 court may award reasonable attorneys' fees to the prevailing party. If the association does not
33 allow a unit owner who complies with this subsection to inspect and copy the requested contract,
34 and if a court of competent jurisdiction thereafter enters an order compelling the association to
35 do so, the court shall also order the association to pay the unit owner's costs, including reasonable
36 attorneys' fees, incurred to obtain the order.";

37
38 and on page 7, lines 17-21, by rewriting the lines to read:

39 "independent contractors. A contract between an association and a managing
40 agent shall not have a term exceeding one year and shall not contain an
41 automatic renewal provision that requires the association to give notice of non
42 renewal more than 30 days prior to the contract's anniversary date. Any
43 contract with a managing agent that is automatically renewed shall be

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1 terminable by the association for any reason upon 60 days' notice. A managing
2 agent shall not be compensated in whole or in part based on the amount of
3 finances collected by the managing agent on behalf of the association and shall
4 not collect from the association or a lot owner any fee in connection with its
5 collection of a fine imposed by the association.";
6

7 and on page 7, lines 24-27, by rewriting the lines to read:

8 "common elements-elements; provided, however, that in the absence of an
9 express authorization in the declaration, an association shall not enforce any
10 restriction on parking of a personal vehicle on a public street or public road
11 for which the North Carolina Department of Transportation or local
12 government has assumed responsibility for maintenance and repairs, unless
13 the authority to regulate such parking has been expressly delegated to the
14 association by the Department of Transportation or local government under
15 terms prescribing the manner in which the association may exercise that
16 authority. Any such delegation shall be valid for a period not to exceed five
17 years, at which time the association must reapply to the delegating entity. As
18 used in this subdivision, "personal vehicle" means an automobile with a gross
19 weight of less than 26,001 pounds that is used for personal pleasure, travel, or
20 commuting to and from a place of work, and does not include a motor home
21 or self-propelled recreational vehicle, or an automobile that is otherwise used
22 primarily in connection with any commercial endeavor or business.";
23

24 and on page 7, lines 38-48, by rewriting the lines to read:

25 "(13a) Impose reasonable-charges in connection with the preparation of a lender's
26 questionnaire or certification or statements-a statement of unpaid assessments,
27 which must be furnished within 10 business-days after receipt of the request,
28 in an amount not to exceed two hundred dollars (\$200.00) per statement or
29 request, item requested, and an additional expedite-expedited fee in an amount
30 not to exceed one hundred dollars (\$100.00) if the item is requested to be
31 furnished less than 10 days after request is made within 48 hours of closing,
32 all of which receipt of the request. These charges may be collected by the
33 association, its managers, or its agents. Any charge for preparation of a
34 lender's questionnaire or certification shall be paid by the requesting party.
35 Neither the association nor its managing agent shall impose any charge upon
36 a lot owner or a prospective purchaser of a lot in connection with the
37 conveyance of a lot unless the charge is authorized in this subdivision.
38 Violation of this subdivision by an association or by its managing agent shall
39 constitute an unfair and deceptive trade practice under G.S. 75-1.1.";
40

41 and on page 7, line 50, by rewriting the line to read:

42 "..."

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1 (15a) Exercise any authority granted to it under the declaration to approve or
2 disapprove any proposed changes on a lot or limited common element. In
3 exercising such authority the association shall provide a fair, reasonable, and
4 expeditious procedure for making its decision, which procedure shall be set
5 forth in the association's governing documents. The procedures shall state the
6 maximum time for issuance of any decision on a proposal or a request for
7 reconsideration. At a minimum, a decision shall be made within 90 days after
8 the initial submission of the proposal or submission of any additional
9 information or changes to the proposal requested by the association in
10 response to the initial submission. A decision shall be in writing, shall be made
11 in good faith, and may not be unreasonable, arbitrary, or capricious. If the
12 proposal is disapproved, the decision shall include both an explanation of why
13 the proposal is disapproved and a description of the procedure for
14 reconsideration of the decision by the executive board.
15 ";

16
17 and on page 8, lines 11-13, by rewriting the line to read:

18 "evidence, and notice of the decision. A written notice of hearing shall be sent to the unit owner
19 as provided in G.S. 47F-3-116(e) not less than 10 days prior to the scheduled hearing date. The
20 notice of hearing shall specify the date, time, and place of the hearing and shall include a general
21 description of each alleged violation and the action, if any, to cure each alleged violation. The
22 unit owner shall be given an opportunity to be heard and to present evidence at the hearing. A
23 written notice of the decision specifying each violation verified by the evidence and the action,
24 if any, to cure each verified violation shall be sent to the unit owner as provided in
25 G.S. 47F-3-116(e). If it is decided that a fine should be imposed, a fine not to exceed one hundred
26 dollars (\$100.00) may be imposed for the violation and without further hearing, for each day
27 more than five days after the decision that the violation ~~occurs~~ occurs, up to a maximum fine of
28 two thousand five hundred dollars (\$2,500). Such fines";

29
30 and on page 8, lines 23-34, by rewriting the lines to read:

31 "(a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or
32 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the
33 clerk of superior court of the county in which the lot is located in the manner provided in this
34 section. A claim of lien securing a debt consisting of fines or fine-related charges shall be filed
35 separately from a claim of lien securing other sums due the association and shall be filed within
36 90 days after the date the fine was imposed. As used in this section, "fines or fine-related charges"
37 means fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by
38 the association related to fines imposed by the association. Once filed, a claim of lien secures all
39 sums due the association through the date filed and any sums due to the association thereafter.
40 Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed
41 pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the ~~claim~~
42 claims of lien provided for under this section as well as any other sums due and payable to the

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1 association under the declaration, the provisions of this Chapter, or as the result of an arbitration,
2 mediation, or judicial decision.";

3
4 and on page 8, lines 37-38, by rewriting the lines to read:

5 "that its records contain the lot owner's current physical mailing address ~~address~~ and current
6 electronic mailing address. No fewer than 15 days prior to filing";

7
8 and on page 9, lines 1-4, by deleting those lines in their entirety;

9
10 and on page 9, lines 13-14, by rewriting the lines to read:

11 "~~FORECLOSURE ENFORCEMENT AGAINST YOU AND YOUR PROPERTY IN LIKE~~
12 ~~MANNER AS A MORTGAGE AS PERMITTED UNDER NORTH CAROLINA LAW.~~";

13
14 and on page 9, lines 34-38, by rewriting the lines to read:

15 "years after the filing of the claim of lien in the office of the clerk of superior court. A lien
16 securing a debt consisting of fines or fine-related charges is extinguished unless proceedings to
17 enforce the lien are instituted within one year after the filing of the claim of lien in the office of
18 the clerk of superior court.";

19
20 and on page 9, line 44 through page 10, line 13, by rewriting the lines to read:

21 "(e) Attorneys' fees. –

22 (1) The association shall be entitled to recover the reasonable attorneys' fees and
23 costs it incurs in connection with the collection of any sums ~~due~~ due, except
24 as otherwise provided in subdivision (2) of this subsection.

25 (2) In an action to enforce a claim of lien securing a debt consisting of fines or
26 fine-related charges, upon findings by the court (i) that there was an
27 unwarranted refusal by the lot owner to negotiate or pay the fines or
28 fine-related charges and (ii) that the amount of damages recovered exceeded
29 the highest offer made by the lot owner no later than 90 days before the
30 commencement of trial, the presiding judge may, in the judge's discretion,
31 allow reasonable attorneys' fees to the duly licensed attorneys representing the
32 association obtaining a judgment for damages in said suit, in an amount not to
33 exceed ten thousand dollars (\$10,000) or fifteen percent (15%) of the amount
34 recovered, whichever is greater, said attorneys' fees to be taxed as a part of the
35 court costs. When the presiding judge determines that an award of attorneys'
36 fees is to be made under this subsection in an action to enforce a claim of lien
37 securing a debt consisting of fines or fine-related charges, the judge shall issue
38 a written order including findings of fact detailing the factual basis for the
39 finding of an unwarranted refusal to negotiate or pay the debt secured by the
40 claim of lien, and setting forth the amount of the highest offer made by the lot
41 owner 90 days or more before the commencement of trial, and the amount of
42 damages recovered, as well as the factual basis and amount of any such
43 attorneys' fees to be awarded.

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1 (3) A lot owner may not be required to pay attorneys' fees and court costs until
2 the lot owner is notified in writing of the association's intent to seek payment
3 of attorneys' fees, costs, and expenses. The notice must be sent by first-class
4 mail to the physical address of the lot and the lot owner's address of record
5 with the association and, if different, to the address for the lot owner shown
6 on the county tax records for the lot. The association must make reasonable
7 and diligent efforts to ensure that its records contain the lot owner's current
8 mailing address. Notwithstanding anything to the contrary in this Chapter,
9 there shall be no requirement that notice under this subsection be mailed to an
10 address which is known to be a vacant lot on which no dwelling has been
11 constructed or a lot for which there is no United States postal address. The
12 notice shall set out the outstanding balance due as of the date of the notice and
13 state that the lot owner has 15 days from the mailing of the notice by first-class
14 mail to pay the outstanding balance without the attorneys' fees and court costs.
15 If the lot owner pays the outstanding balance within this period, then the lot
16 owner shall have no obligation to pay attorneys' fees, costs, or expenses. The
17 notice shall also inform the lot owner of the opportunity to contact a
18 representative of the association to discuss a payment schedule for the
19 outstanding balance, as provided in subsection (i) of this section, and shall
20 provide the name and telephone number of the representative.";

21
22 and on page 10, line 14, through page 12, line 4, by rewriting the lines to read:

23 (f) Except as provided in subsection (h) of this section, the association, acting through
24 the executive board, may foreclose a claim of lien securing a debt consisting of sums due the
25 association other than fines or fine-related charges in like manner as a mortgage or deed of trust
26 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,
27 if the ~~assessment remains unpaid~~ delinquency has continued for ~~90-180~~ days or more. The
28 association shall not foreclose the claim of lien unless the executive board votes to commence
29 the proceeding against the specific 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 ...
35 (5) After the association has filed a claim of lien and prior to the commencement
36 of a nonjudicial foreclosure, the association shall give to the lot owner notice
37 of the association's intention to commence a nonjudicial foreclosure to enforce
38 its claim of lien. The notice shall contain the information required in
39 ~~G.S. 45-21.16(e)(5a)~~ G.S. 45-21.16(c)(5) and G.S. 45-21.16(c)(5a) and shall
40 specifically reference the lot owner's right of redemption provided under
41 subdivision (8) of this subsection. The notice shall be sent by first class mail
42 to the physical address of the lot and the lot owner's address of record with the

ADOPTED

PLANA GENERAL ASSEMBLY
AMENDMENT
House Bill 542

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(to be filled in by
Principal Clerk)

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1 association and, if different, to the address for the lot owner shown on the
2 county tax records for the lot.
3 (5a) The notice of hearing required pursuant to G.S. 45-21.16(a) shall be
4 accompanied by the association's certification of the actions it has taken to
5 give the owner notice of delinquent assessments in compliance with
6 subsection (b) of this section.
7 (5b) At the commencement of the hearing, the clerk shall inquire as to whether the
8 owner occupies the lot as his or her principal residence. If it appears that the
9 owner does currently occupy the lot as a principal residence, the clerk shall
10 further inquire as to the efforts the association has made to communicate with
11 the owner and to attempt to resolve the matter voluntarily before the
12 foreclosure proceeding. The clerk's inquiry shall not be required if the
13 association has submitted, at or before the hearing, an affidavit briefly
14 describing any efforts that have been made to resolve the default with the
15 owner and the results of any such efforts.
16 (5c) The clerk shall order the hearing continued if the clerk finds that there is good
17 cause to believe that additional time or additional measures have a reasonable
18 likelihood of resolving the delinquency without foreclosure. In determining
19 whether to continue the hearing, the clerk may consider (i) whether the
20 association has offered the owner an opportunity to resolve the foreclosure
21 under a payment schedule pursuant to subsection (i) of this section, (ii)
22 whether the association has engaged in actual responsive communication with
23 the owner, including telephone conferences or in-person meetings with the
24 owner or other actual two-party communications, (iii) whether the owner has
25 indicated that he or she has the intent and ability to resolve the delinquency
26 by making future payments under a payment plan, and (iv) whether the
27 initiation or continuance of good- faith voluntary resolution efforts between
28 the parties may resolve the matter without a foreclosure sale. Where good
29 cause exists to continue the hearing, the clerk shall order the hearing continued
30 to a date and time certain not more than 90 days from the date scheduled for
31 the original hearing. Nothing in this part shall limit the authority of the clerk
32 to continue a hearing for other good cause shown.

33 ";

34
35 and on page 12, lines 5-19, by rewriting the lines to read:

36 "(g) The provisions of subsection (f) of this section do not prohibit or prevent an
37 association from pursuing judicial foreclosure of a claim of ~~lien~~, lien securing a debt consisting
38 of sums due the association other than fines and fine-related charges, from taking other actions
39 to 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 section.

ADOPTED

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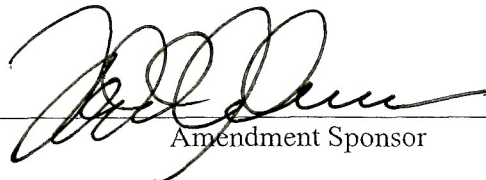
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1 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
 2 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines
 3 imposed by the association or fine-related charges may only be enforced by judicial foreclosure,
 4 as provided in Article 29A of Chapter 1 of the General Statutes. the filing of a civil action seeking
 5 a judgment. In addition, an association shall not levy, charge, or attempt to collect a service,
 6 collection, consulting, or administration fee from any lot owner unless the fee is expressly
 7 allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees
 8 may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the
 9 General Statutes. the filing of a civil action seeking a judgment. Liens arising as a result of the
 10 entry of a judgment in favor of the association in any such civil action shall relate back and be
 11 effective as of the date the claim of lien was filed.";

12
 13 and on page 12, line 28, by rewriting the line to read:
 14 "at least five business days before the date on which the lot owner wishes to inspect and copy
 15 and the request satisfies the conditions for inspection set forth in G.S. 55A-16-02(c). A demand
 16 to inspect made pursuant to this subsection shall be presumed to have been made in good faith
 17 and for a proper purpose. In any action to compel the inspection and copying of documents, the
 18 court may award reasonable attorneys' fees to the prevailing party. If the association does not
 19 allow a lot owner who complies with this subsection to inspect and copy the requested contract,
 20 and if a court of competent jurisdiction thereafter enters an order compelling the association to
 21 do so, the court shall also order the association to pay the lot owner's costs, including reasonable
 22 attorneys' fees, incurred to obtain the order."

SIGNED _____



Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

**The official copy of this document, with signatures
 and vote information, is available in the
 Senate Principal Clerk's Office**