

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40592-MQa-104B

Short Title: Nonjudicial Foreclosure of Timeshare Liens. (Public)

Sponsors: Representative Cairns.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A NONJUDICIAL FORECLOSURE PROCESS FOR CERTAIN
3 LIENS FILED IN CONNECTION WITH TIMESHARE OWNERSHIP IN THIS STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 93A-62 reads as rewritten:

6 "§ 93A-62. **Delinquent assessments; developer guarantee.**

7 (a) Delinquent assessments may bear interest at the highest rate permitted by law or at
8 some lesser rate established by the managing entity. In addition to interest, the managing entity
9 may charge a reasonable administrative late fee for each delinquent assessment. Any costs of
10 collection, including reasonable collection agency fees and reasonable attorney's fees, incurred
11 in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a
12 lien in favor of the managing entity upon the timeshare with respect to which the delinquent
13 assessment has been incurred.

14 (b) The managing entity may deny the use of the timeshare units or facilities, including
15 the denial of the right to make a reservation or the cancellation of a confirmed reservation for
16 timeshare periods, to any owner who is delinquent in the payment of any assessments made by
17 the managing entity against the owner for common expenses, in accordance with the following:

- 18 (1) The managing entity must, no less than 30 days after the date the assessment
19 is due, notify the owner in writing of the total amount of any delinquency
20 which then exists, including any accrued interest and late charges permitted
21 to be imposed under the terms of the timeshare program or by law and
22 including a per diem amount. The notice shall be sent to the owner at the
23 owner's known address as recorded in the books and records of the timeshare
24 program.
- 25 (2) The notice shall clearly state that the owner will not be permitted to use the
26 owner's timeshare, that the owner will not be permitted to make a reservation
27 in the timeshare program's reservation system, or that any confirmed
28 reservation may be canceled until the total amount of such delinquency is
29 satisfied in full or until the owner produces satisfactory evidence that the
30 delinquency does not exist.
- 31 (3) The notice shall be effective to bar the use of the owner and those claiming
32 use rights under the owner, including the owner's guests, lessees, and persons
33 receiving use rights in the timeshare through an exchange program; provided,
34 however, that (i) a managing entity desiring to deny the use of the timeshare
35 to persons receiving use rights in the delinquent owner's timeshare through an
36 exchange program that has an affiliation agreement with the managing entity



1 shall notify the affiliated exchange company in writing of the denial of use at
2 the time that the notice was sent to the owner and (ii) any person claiming
3 through the affiliated exchange program who has received a confirmed
4 assignment of the delinquent owner's use rights from the affiliated exchange
5 company prior to the expiration of 48 hours after the receipt by the affiliated
6 exchange company of the written notice from the managing entity shall be
7 permitted by the managing entity to use the owner's use rights.

8 (4) Any costs reasonably incurred by the managing entity in connection with its
9 compliance with the requirements of this section may be assessed by the
10 managing entity against the delinquent owner and collected in the same
11 manner as if those costs were common expenses of the timeshare program
12 allocable solely to the delinquent purchaser.

13 (5) A managing entity may not enforce the denial of use against any one owner
14 or group of owners without similarly enforcing it against all owners, including
15 all developers.

16 (c) In addition to the denial of use pursuant to subsection (b) of this section, the managing
17 entity may give further notice to the delinquent owner that the managing entity may rent the
18 delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the
19 following:

20 (1) A further notice of intent to rent must be given no less than 30 days after the
21 date the assessment is due and must be delivered to the purchaser in the
22 manner required for notices under subsection (b) of this section.

23 (2) The notice shall state that unless the owner satisfies the delinquency in full, or
24 unless the owner produces satisfactory evidence that the delinquency does not
25 exist, the purchaser will be bound by the terms of any rental contract entered
26 into by the managing entity with respect to the owner's timeshare or
27 appurtenant use rights.

28 (3) The notice shall state that the owner will remain liable for any difference
29 between the amount of the delinquency and the net amount produced by the
30 rental contract and applied against the delinquency, and the managing entity
31 shall not be required to provide any further notice to the owner regarding any
32 residual delinquency.

33 (4) The managing entity's efforts to secure a rental shall not commence on a date
34 earlier than 10 days after the date of the notice of intent to rent.

35 (5) The managing entity must apply the proceeds of any rental, net of any rental
36 commissions, cleaning charges, travel agent commissions, or any other
37 commercially reasonable charges reasonably and usually incurred by the
38 managing entity in securing rentals to the delinquent owner's account.

39 (6) A managing entity may make a reasonable determination regarding the
40 priority of rentals of timeshares and, if the delinquent owner whose timeshare
41 is rented cannot be specifically determined due to the structure of the
42 timeshare program, the managing entity may allocate any net rental proceeds
43 in any reasonable manner.

44 (7) In securing a rental, the managing entity shall not be required to obtain the
45 highest nightly rental rate available, nor any particular rental rate, and the
46 managing entity shall not be required to rent the entire timeshare or
47 appurtenant rights; however, the managing entity must use reasonable efforts
48 to secure a rental that is commensurate with other rentals of similar timeshares
49 or use rights generally secured at that time.

50 (d) For timeshare estates located in this State, the managing entity shall have a lien on a
51 timeshare for any assessment levied against that timeshare from the date such assessment

1 becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for
2 the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the
3 owner's guest or lessee that results in damage to the timeshare property. All of the following
4 apply to a lien imposed under this section:

5 (1) The managing entity, or the holder of the lien, may bring a judicial action in
6 its name to foreclose the lien in the nature of an action to foreclose a mortgage
7 or deed of trust and may also bring an action to recover a money judgment for
8 the unpaid assessments without waiving any claim of lien. As an alternative
9 to initiating a judicial action, the managing ~~entity~~ entity, or the holder of the
10 lien, may initiate a nonjudicial foreclosure proceeding, as provided
11 in subsections (g) through (m) of this section, to foreclose the assessment lien.

12 (2) The lien is effective from the date of and shall relate back to the recording of
13 the original timeshare declaration, or, in the case of lien on a timeshare located
14 in a phase timeshare program, the last to occur of the recording of the original
15 timeshare declaration or amendment creating the timeshare. However, as to
16 first mortgages of record, the lien is effective as follows:

17 a. For a judicial foreclosure, from and after filing of the claim of lien in
18 the office of the clerk of superior court in the county where the
19 timeshare estate is located.

20 b. For a nonjudicial foreclosure, from and after the filing of the claim of
21 lien in the office of the clerk of superior court in the county where the
22 timeshare estate is located.

23 (3) The claim of lien shall state the name of the timeshare program and identify
24 the timeshare for which the lien is effective, state the name of the owner, state
25 the assessment amount due, and state the due dates. The claim of lien shall be
26 signed and acknowledged by an officer or agent of the managing entity or the
27 ~~holder~~ holder of the lien.

28 (4) The lien shall expire upon the earlier of:
29 a. The date it is satisfied.
30 b. Five years from the date the claim of lien is filed unless an action or
31 proceeding to enforce the lien is commenced within that time.

32 (5) A claim of lien for assessments may include assessments which are due when
33 the claim is recorded and all assessments that subsequently become due and
34 are delinquent. Upon full payment, the person making the payment is entitled
35 to receive a satisfaction of the lien.

36 (6) A judgment in any action or suit brought to foreclose the claim of lien may
37 include costs and reasonable attorney's fees for the substantially prevailing
38 party. For a nonjudicial foreclosure, the managing entity or holder of the lien
39 shall be entitled to recover costs and reasonable attorney's fees in connection
40 with any sums due under the lien and the trustee shall be entitled to recover
41 the trustee's commission described in subdivision (12) or (13) of subsection
42 (j) of this section.

43 (e) ~~A-Except in the event of a nonjudicial foreclosure, a successor in interest, regardless~~
44 ~~of how the timeshare has been acquired, including a purchaser at a judicial sale or foreclosure~~
45 ~~trustee sale, is jointly and severally liable with their predecessor in interest for all unpaid~~
46 ~~assessments against the predecessor up to the time of transfer of the timeshare to a successor,~~
47 ~~without prejudice to any right a successor in interest may have to recover from their predecessor~~
48 ~~in interest any amounts assessed against the predecessor and paid by the successor; provided,~~
49 ~~however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a~~
50 ~~result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall~~

1 be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to
2 the previous owner which came due prior to acquisition of title by the first mortgagee.

3 (f) If the developer agrees to guarantee the level of assessments for the timeshare
4 program for any period of time, the developer may be excused from the payment of the
5 developer's share of the assessments that otherwise would have been assessed against
6 developer-owned timeshares during the guarantee period, provided that the developer guarantees
7 that (i) during the guarantee period the assessments against owner timeshares will not increase
8 over the dollar amount stated in the adopted, good-faith budget of the timeshare program and (ii)
9 the developer will pay any amount by which all common expenses incurred during the guarantee
10 period exceed the total revenues of the timeshare program during the guarantee period.

11 (g) A claim of lien complying with the requirements of subdivision (3) of subsection (d)
12 of this section and subsection (i) of this section must be filed in the office of the clerk of superior
13 court of the county in which the timeshare is located in the manner provided in this section.

14 (h) No fewer than 15 days prior to filing the claim of lien, the managing entity or the
15 holder of the lien shall mail a statement of the assessment amount due by first-class mail to the
16 owner's known address as recorded in the books and records of the timeshare program. If the
17 record owner is a corporation or limited liability company, the statement shall also be sent by
18 first-class mail to the mailing address of the registered agent for the corporation or limited
19 liability company.

20 (i) In addition to the requirements of subdivision (3) of subsection (d) of this section, a
21 claim of lien shall contain the following statement in print that is in boldface, capital letters, and
22 no smaller than the largest print used elsewhere in the document:

23 "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE
24 LIEN IS NOT PAID, THE MANAGING ENTITY OR THE HOLDER OF THE LIEN MAY
25 PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS
26 A MORTGAGE UNDER NORTH CAROLINA LAW."

27 The person signing the claim of lien on behalf of the managing entity or the holder of the lien
28 shall attach to and file with the claim of lien a certificate of service attesting to the attempt of
29 service on the record owner and those entitled to receive notice under G.S. 45-21.16(b), which
30 service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a
31 summons and a complaint. If the actual service is not achieved, the person signing the claim of
32 lien on behalf of the managing entity or the holder of the lien shall be deemed to have met the
33 requirements of this subsection if service has been attempted pursuant to both of the following:
34 (i) G.S. 1A-1, Rule 4(j)(1)c., d., or e. and (ii) by mailing a copy of the lien by regular, first-class
35 mail, postage prepaid to the owner's known address as recorded in the books and records of the
36 timeshare program. In the event that the owner of record is not a natural person, and actual service
37 is not achieved, the person signing the claim of lien on behalf of the managing entity or the holder
38 of the lien shall be deemed to have met the requirements of this subsection if service has been
39 attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through
40 G.S. 1A-1, Rule 4(j)(9).

41 (j) Except as provided in subsection (l) of this section, the managing entity or the holder
42 of the lien may foreclose a claim of lien in like manner as a mortgage or deed of trust on real
43 estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,
44 excluding G.S. 45-21.16, if the assessment remains unpaid for 30 days or more. The following
45 provisions and procedures shall be applicable to and complied with in every nonjudicial power
46 of sale foreclosure of a claim of lien filed under this section, and these provisions and procedures
47 shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of
48 Chapter 45 of the General Statutes:

49 (1) The managing entity or the holder of the lien shall be deemed to have a power
50 of sale for purposes of enforcement of its claim of lien.

- 1 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
2 the General Statutes shall mean the managing entity or the holder of the lien,
3 except as provided otherwise in this Chapter.
- 4 (3) The term "security instrument" as used in Article 2A of Chapter 45 of the
5 General Statutes shall mean the claim of lien.
- 6 (4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes
7 shall mean the person or entity appointed by the managing entity or the holder
8 of the lien under subdivision (6) of this subsection.
- 9 (5) After the managing entity or the holder of the lien has filed a claim of lien and
10 prior to the commencement of a nonjudicial foreclosure, the managing entity
11 or the holder of the lien shall give to the owner notice of the intention of the
12 managing entity or the holder of the lien to commence a nonjudicial
13 foreclosure to enforce its claim of lien. The notice shall contain all of the
14 following:
- 15 a. The information required in G.S. 45-21.16(c)(5a).
16 b. The legal description of the timeshare.
17 c. The name and address of the trustee appointed pursuant to subdivision
18 (6) of this subsection.
19 d. The right and method by which the obligor may cure the default
20 pursuant to subdivision (9) of this subsection.
21 e. A statement that, if the managing entity or the holder of the lien
22 initiates a nonjudicial foreclosure, the owner shall have the option to
23 object at any time before the sale of the timeshare by delivering a
24 written objection to the trustee, and in such event the managing entity
25 or the holder of the lien may thereafter proceed only by filing a judicial
26 foreclosure action.
- 27 (6) The managing entity or the holder of the lien shall appoint a trustee to conduct
28 the nonjudicial foreclosure proceeding and sale. The appointment of the
29 trustee shall be included in the claim of lien or in a separate instrument filed
30 with the clerk of superior court in the county in which the timeshare is located.
31 The managing entity or the holder of the lien, at its option, may from time to
32 time remove a trustee previously appointed and appoint a successor trustee by
33 filing a Substitution of Trustee with the clerk of superior court in the
34 foreclosure proceeding. Counsel for the managing entity or the holder of the
35 lien or a title insurer authorized to transact business in this State may be
36 appointed by the managing entity or the holder of the lien to serve as the
37 trustee and may serve in that capacity as long as the owner does not contest
38 the obligation to pay or the amount of any sums due the managing entity or
39 the holder of the lien, or the validity, enforcement, or foreclosure of the claim
40 of lien, as provided in subdivision (13) of this subsection. Any trustee
41 appointed pursuant to this subsection shall have the same fiduciary duties and
42 obligations as a trustee in the foreclosure of a deed of trust.
- 43 (7) If an owner objects to the use of a nonjudicial foreclosure procedure pursuant
44 to sub-subdivision e. of subdivision (5) of this subsection, the managing entity
45 or the holder of the lien may proceed only by filing a judicial foreclosure
46 action. The owner's written objection must state: "The undersigned owner
47 exercises the owner's right to object to the use of the nonjudicial foreclosure
48 procedure." Owners who do not object to the use of the nonjudicial foreclosure
49 procedure shall not be subject to a deficiency judgment even if the proceeds
50 from the sale of the timeshare are insufficient to offset the amounts secured
51 by the lien.

- 1 (8) If a valid debt, default, and notice to those entitled to receive notice under
2 G.S. 45-21.16(b) are found to exist, then the clerk of superior court shall
3 authorize the sale of the property described in the claim of lien by the trustee.
- 4 (9) If, prior to the expiration of the upset bid period described in G.S. 45-21.21,
5 the owner satisfies the debt secured by the claim of lien and pays all expenses
6 and costs incurred in filing and enforcing the assessment lien of the timeshare
7 owners' association, managing entity, or the holder of the lien, including, but
8 not limited to, advertising costs, attorneys' fees, and the trustee's commission,
9 then the trustee shall dismiss the foreclosure action and the managing entity
10 or the holder of the lien shall cancel the claim of lien of record in accordance
11 with the provisions of G.S. 45-36.3. The owner shall have all rights granted
12 under Article 4 of Chapter 45 of the General Statutes to ensure the satisfaction
13 of the claim of lien by the managing entity or the holder of the lien.
- 14 (10) Any person, other than the trustee, may bid at the foreclosure sale. Unless
15 prohibited in the timeshare declaration, the managing entity or the holder of
16 the lien may bid on the timeshare at a foreclosure sale directly or through an
17 agent. If the managing entity or the holder of the lien, or the agent of either, is
18 the high bidder at the sale, the trustee shall allow the managing entity or the
19 holder of the lien to pay the costs and expenses of the sale and apply a credit
20 against the sums due by the owner to the managing entity or holder of the lien
21 in lieu of paying the bid price in full.
- 22 (11) Upon the expiration of the upset bid period, the trustee shall have full power
23 and authority to execute a deed for the timeshare to the high bidder.
- 24 (12) The trustee shall be entitled to a commission for services rendered which shall
25 include fees, costs, and expenses reasonably incurred by the trustee in
26 connection with the foreclosure, whether or not a sale is held. Except as
27 provided in subdivision (13) of this subsection, the trustee's commission shall
28 be paid without regard to any limitations on compensation otherwise provided
29 by law, including, without limitation, the provisions of G.S. 45-21.15.
- 30 (13) If the owner does not contest the obligation to pay the amount of any sums
31 due the managing entity or the holder of the lien, or the validity, enforcement,
32 or foreclosure of the claim of lien at any time after the expiration of the 15-day
33 period following notice as required in subsection (h) of this section, then
34 attorneys' fees and the trustee's commission collectively charged to the owner
35 shall not exceed one thousand two hundred dollars (\$1,200), not including
36 costs or expenses incurred. The obligation to pay and the amount of any sums
37 due the managing entity or the holder of the lien and the validity, enforcement,
38 or foreclosure of the claim of lien remain uncontested as long as the owner
39 does not dispute, contest, or raise any objection, defense, offset, or
40 counterclaim as to the amount or validity of any portion of the sums claimed
41 due by the managing entity or the holder of the lien, or the validity,
42 enforcement, or foreclosure of the claim of lien. Any judgment, decree, or
43 order in any action brought under this section shall include costs and
44 reasonable attorneys' fees for the prevailing party.
- 45 (14) Owners shall be deemed to have the rights and remedies available to
46 mortgagors under G.S. 45-21.34.
- 47 (k) The provisions of subsection (j) of this section do not prohibit or prevent a managing
48 entity or the holder of the lien from pursuing judicial foreclosure of a claim of lien, from taking
49 other actions to recover the sums due the managing entity or the holder of the lien, or from
50 accepting a deed in lieu of foreclosure. Any judgment, decree, or order in any judicial foreclosure
51 or civil action relating to the collection of assessments shall include an award of costs and

1 reasonable attorneys' fees for the prevailing party, which shall not be subject to the limitation
2 provided in subdivision (13) of subsection (j) of this section.

3 (l) A claim of lien securing a debt consisting solely of fines imposed by the timeshare
4 owners' association, interest on unpaid fines, or attorneys' fees incurred by the timeshare owners'
5 association solely associated with fines imposed by the timeshare owners' association may only
6 be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General
7 Statutes. In addition, any claim of lien securing a debt consisting solely of service, collection,
8 consulting, or administration fees may only be enforced by judicial foreclosure, as provided in
9 Article 29A of Chapter 1 of the General Statutes.

10 (m) All nonjudicial foreclosure proceedings commenced by a managing entity or the
11 holder of the lien before October 1, 2024, and all sales and transfers of real property as part of
12 those proceedings pursuant to the provisions of this Chapter, Chapter 47A of the General Statutes,
13 or provisions contained in a timeshare declaration, are declared to be valid unless an action to set
14 aside the foreclosure is commenced on or before October 1, 2024, or within one year after the
15 date of the foreclosure sale, whichever occurs last.

16 **SECTION 2.** There is appropriated from the General Fund to the North Carolina
17 Real Estate Commission the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the
18 2024-2025 fiscal year to be used by the Commission to inform its licensees of the nonjudicial
19 foreclosure process for timeshares established in this act.

20 **SECTION 3.** Section 1 of this act becomes effective October 1, 2024, and applies to
21 claims of lien filed on or after that date. Section 2 becomes effective July 1, 2024. The remainder
22 of this act is effective when it becomes law.