

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 1034

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

Sponsors: Representatives Cairns, Bradford, Tyson, and Biggs (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Appropriations, if favorable, Rules, Calendar, and
Operations of the House

May 7, 2024

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

The General Assembly of North Carolina enacts:

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

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

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

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

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



to persons receiving use rights in the delinquent owner's timeshare through an exchange program that has an affiliation agreement with the managing entity shall notify the affiliated exchange company in writing of the denial of use at the time that the notice was sent to the owner and (ii) any person claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent owner's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of the written notice from the managing entity shall be permitted by the managing entity to use the owner's use rights.

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

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

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

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

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

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

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

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

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

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

(d) For timeshare estates located in this State, the managing entity shall have a lien on a timeshare for any assessment levied against that timeshare from the date such assessment becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the owner's guest or lessee that results in damage to the timeshare property. All of the following apply to a lien imposed under this section:

- (1) The managing entity, or the holder of the lien, may bring a judicial action in its name to foreclose the lien in the nature of an action to foreclose a mortgage or deed of trust and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing ~~entity~~ entity, or the holder of the lien, may initiate a nonjudicial foreclosure ~~proceeding~~ proceeding, as provided in subsections (g) through (m) of this section, to foreclose the assessment lien.
- (2) The lien is effective from the date of and shall relate back to the recording of the original timeshare declaration, or, in the case of lien on a timeshare located in a phase timeshare program, the last to occur of the recording of the original timeshare declaration or amendment creating the timeshare. However, as to first mortgages of record, the lien is effective as follows:
 - a. For a judicial foreclosure, from and after filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.
 - b. For a nonjudicial foreclosure, from and after the filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.
- (3) The claim of lien shall state the name of the timeshare program and identify the timeshare for which the lien is effective, state the name of the owner, state the assessment amount due, and state the due dates. The claim of lien shall be signed and acknowledged by an officer or agent of the managing entity or the ~~holder~~ holder of the lien.
- (4) The lien shall expire upon the earlier of:
 - a. The date it is satisfied.
 - b. Five years from the date the claim of lien is filed unless an action or proceeding to enforce the lien is commenced within that time.
- (5) A claim of lien for assessments may include assessments which are due when the claim is recorded and all assessments that subsequently become due and are delinquent. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.
- (6) A judgment in any action or suit brought to foreclose the claim of lien may include costs and reasonable attorney's fees for the substantially prevailing party. For a nonjudicial foreclosure, the managing entity or holder of the lien shall be entitled to recover costs and reasonable attorney's fees in connection with any sums due under the lien and the trustee shall be entitled to recover the trustee's commission described in subdivision (12) or (13) of subsection (j) of this section.

(e) ~~A~~ Except in the event of a nonjudicial foreclosure, a successor in interest, regardless of how the timeshare has been acquired, including a purchaser at a judicial sale or foreclosure trustee sale, is jointly and severally liable with their predecessor in interest for all unpaid assessments against the predecessor up to the time of transfer of the timeshare to a successor, without prejudice to any right a successor in interest may have to recover from their predecessor in interest any amounts assessed against the predecessor and paid by the successor; provided,

however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee.

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

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

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

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

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

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

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

- (1) The managing entity or the holder of the lien shall be deemed to have a power of sale for purposes of enforcement of its claim of lien.
- (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of the General Statutes shall mean the managing entity or the holder of the lien, except as provided otherwise in this Chapter.
- (3) The term "security instrument" as used in Article 2A of Chapter 45 of the General Statutes shall mean the claim of lien.
- (4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes shall mean the person or entity appointed by the managing entity or the holder of the lien under subdivision (6) of this subsection.
- (5) After the managing entity or the holder of the lien has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the managing entity or the holder of the lien shall give to the owner notice of the intention of the managing entity or the holder of the lien to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain all of the following:
- a. The information required in G.S. 45-21.16(c)(5a).
 - b. The legal description of the timeshare.
 - c. The name and address of the trustee appointed pursuant to subdivision (6) of this subsection.
 - d. The right and method by which the obligor may cure the default pursuant to subdivision (9) of this subsection.
 - e. A statement that, if the managing entity or the holder of the lien initiates a nonjudicial foreclosure, the owner shall have the option to object at any time before the sale of the timeshare by delivering a written objection to the trustee, and in such event the managing entity or the holder of the lien may thereafter proceed only by filing a judicial foreclosure action.
- (6) The managing entity or the holder of the lien shall appoint a trustee to conduct the nonjudicial foreclosure proceeding and sale. The appointment of the trustee shall be included in the claim of lien or in a separate instrument filed with the clerk of superior court in the county in which the timeshare is located. The managing entity or the holder of the lien, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a Substitution of Trustee with the clerk of superior court in the foreclosure proceeding. Counsel for the managing entity or the holder of the lien or a title insurer authorized to transact business in this State may be appointed by the managing entity or the holder of the lien to serve as the trustee and may serve in that capacity as long as the owner does not contest the obligation to pay or the amount of any sums due the managing entity or the holder of the lien, or the validity, enforcement, or foreclosure of the claim of lien, as provided in subdivision (13) of this subsection. Any trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust.
- (7) If an owner objects to the use of a nonjudicial foreclosure procedure pursuant to sub-subdivision e. of subdivision (5) of this subsection, the managing entity or the holder of the lien may proceed only by filing a judicial foreclosure action. The owner's written objection must state: "The undersigned owner exercises the owner's right to object to the use of the nonjudicial foreclosure procedure." Owners who do not object to the use of the nonjudicial foreclosure procedure shall not be subject to a deficiency judgment even if the proceeds

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

1 accepting a deed in lieu of foreclosure. Any judgment, decree, or order in any judicial foreclosure
2 or civil action relating to the collection of assessments shall include an award of costs and
3 reasonable attorneys' fees for the prevailing party, which shall not be subject to the limitation
4 provided in subdivision (13) of subsection (j) of this section.

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

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

18 **SECTION 2.** There is appropriated from the General Fund to the North Carolina
19 Real Estate Commission the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the
20 2024-2025 fiscal year to be used by the Commission to inform its licensees of the nonjudicial
21 foreclosure process for timeshares established in this act.

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