

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 542  
Committee Substitute Favorable 4/26/23  
Senate Judiciary Committee Substitute Adopted 6/27/23

Short Title: HOA Revisions/Foreclosure Trustee Auctions.

(Public)

Sponsors:

Referred to:

April 3, 2023

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

21 The General Assembly of North Carolina enacts:

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

23 **"§ 47C-3-102. Powers of unit owners' association.**

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

26 ...

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

33 ...

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



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

...

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

...

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

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

...."

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

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

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

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 association 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 association, 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 association under subdivision (6) of this subsection.
- (5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the unit owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).
- (6) The association 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 office of the clerk of court in the county in which the unit is located as an exhibit to the notice of hearing. The association, 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 court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the unit owner does not contest the obligation to pay the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien as provided in subdivision (12) 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 a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.
- (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27, the unit owner satisfies the debt secured by the claim of lien and pays all expenses and costs incurred in filing and enforcing the association assessment lien, including, but not limited to, advertising costs, attorneys' fees, and the trustee's commission, then the trustee shall dismiss the foreclosure action and the association shall cancel the claim of lien of record in accordance with the provisions of G.S. 45-36.3. The unit owner shall have all rights granted under Article 4 of Chapter 45 of the General Statutes to ensure the association's satisfaction of the claim of lien.
- (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless prohibited in the declaration or bylaws, the association may bid on the unit at a foreclosure sale directly or through an agent. If the association or its agent is the high bidder at the sale, the trustee shall allow the association to pay the costs and expenses of the sale and apply a credit against the sums due by the unit owner to the association in lieu of paying the bid price in full.

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

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

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

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

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

...."

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

**"§ 47C-3-118. Association records.**

...

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

...."

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

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

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

...

(3) Hire and discharge 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~~-elements; provided, however, that in no event shall an association enforce any restriction on parking on a public street or public road for which the North Carolina Department of Transportation or local government has assumed responsibility for maintenance and repairs.

...

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

...

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

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

...."

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

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

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

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

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

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

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

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

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

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

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (f) of this section. The first page of the 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 HOMEOWNERS ASSOCIATION 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 association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. The association shall also send the owner a copy of the claim of lien and certificate of service by email if the owner has designated an email address as provided in G.S. 55A-1-70(b). 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 association 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). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court. A lien for a debt consisting solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association is extinguished unless proceedings to enforce the lien are instituted within 180 days after the filing of the claim of lien in the office of the clerk of superior court.

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

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

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

(f) ~~Except as provided in subsection (h) of this section, the association, acting through the executive board, 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, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.~~ The association, acting through the executive board, may enforce a claim of lien by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes, provided that all of the following requirements are met:

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

~~The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, 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 association 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 association, 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 association under subdivision (6) of this subsection.~~
- ~~(5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the lot owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).~~
- ~~(6) The association 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 court in the~~

county in which the planned community is located as an exhibit to the notice of hearing. The association, 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 court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the lot owner does not contest the obligation to pay or the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien, as provided in subdivision (12) 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 a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.

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

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

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

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

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

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

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

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

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

...."

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

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

...

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

...."

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

"Article 31A.

"Civil Penalty and Forfeiture Fund.

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

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

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

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

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

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

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

...."

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

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

...

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

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

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

...."

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

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

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

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

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

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

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

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

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

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

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

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

**"§ 45-21.23. Time of sale.**

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

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

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

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

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

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

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