

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 1541
Committee Substitute Favorable 5/26/05
Third Edition Engrossed 6/1/05
Senate Commerce Committee Substitute Adopted 8/11/05
Senate Finance Committee Substitute Adopted 8/12/05**

Short Title: Homeowner Association Amendments.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING HOMEOWNER ASSOCIATIONS
TO PROVIDE GREATER PROTECTIONS FOR HOMEOWNERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-102(11) 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:

...

(11) Impose reasonable charges for late payment of assessments 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;

...."

SECTION 2. G.S. 47F-3-103(b) reads as rewritten:

"(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (~~G.S. 47F-3-103(f)~~), (G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a

1 quorum is present, may remove any member of the executive board with or without
2 cause, other than a member appointed by the declarant."

3 **SECTION 3.** G.S. 47F-3-103 is amended by adding a new subsection to
4 read:

5 "(f) The association shall publish the names and addresses of all officers and
6 board members of the association within 30 days of their election."

7 **SECTION 4.** G.S. 47F-3-107.1 reads as rewritten:

8 "**§ 47F-3-107.1. Procedures for fines and suspension of planned community**
9 **privileges or services.**

10 Unless a specific procedure for the imposition of fines or suspension of planned
11 community privileges or services is provided for in the declaration, a hearing shall be
12 held before the executive board or an adjudicatory panel appointed by the executive
13 board to determine if any lot owner should be fined or if planned community privileges
14 or services should be suspended pursuant to the powers granted to the association in
15 G.S. 47F-3-102(11) and (12). Any adjudicatory panel appointed by the executive board
16 shall be composed of members of the association who are not officers of the association
17 or members of the executive board. ~~If the executive board fails to appoint an~~
18 adjudicatory panel to hear such matters, hearings under this section shall be held before
19 the executive board. The lot owner charged shall be given notice of the charge,
20 opportunity to be heard and to present evidence, and notice of the decision. If it is
21 decided that a fine should be imposed, a fine not to exceed one hundred ~~fifty~~
22 (\$150.00)-(\$100.00) may be imposed for the violation and without further hearing, for
23 each day more than five days after the decision that the violation occurs. Such fines
24 shall be shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that
25 a suspension of planned community privileges or services should be imposed, the
26 suspension may be continued without further hearing until the violation or delinquency
27 is cured. The lot owner may appeal the decision of an adjudicatory panel to the full
28 executive board by delivering written notice of appeal to the executive board within 15
29 days after the date of the decision. The executive board may affirm, vacate, or modify
30 the prior decision of the adjudicatory body."

31 **SECTION 5.** G.S. 47F-3-108 reads as rewritten:

32 "**§ 47F-3-108. Meetings.**

33 (a) A meeting of the association shall be held at least once each year. Special
34 meetings of the association may be called by the president, a majority of the executive
35 board, or by lot owners having ten percent (10%), or any lower percentage specified in
36 the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in
37 advance of any meeting, the secretary or other officer specified in the bylaws shall
38 cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
39 address of each lot or to any other mailing address designated in writing by the lot
40 owner, or sent by electronic means, including by electronic mail over the Internet, to an
41 electronic mailing address designated in writing by the lot owner. The notice of any
42 meeting shall state the time and place of the meeting and the items on the agenda,
43 including the general nature of any proposed amendment to the declaration or bylaws,
44 any budget changes, and any proposal to remove a director or officer.

1 (b) Meetings of the executive board shall be held as provided in the bylaws. At
2 regular intervals, the executive board meeting shall provide lot owners an opportunity to
3 attend a portion of an executive board meeting and to speak to the executive board
4 about their issues or concerns. The executive board may place reasonable restrictions on
5 the number of persons who speak on each side of an issue and may place reasonable
6 time restrictions on persons who speak.

7 (c) Except as otherwise provided in the bylaws, meetings of the association and
8 the executive board shall be conducted in accordance with the most recent edition of
9 Robert's Rules of Order."

10 **SECTION 6.** G.S. 47F-3-116 reads as rewritten:

11 "**§ 47F-3-116. Lien for assessments.**

12 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days
13 or longer shall constitute a lien on that lot when a claim of lien is filed of record in the
14 office of the clerk of superior court of the county in which the lot is located in the
15 manner provided herein. Unless the declaration otherwise provides, fees, charges, late
16 charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107,
17 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. ~~The~~
18 Except as provided in subsections (a1) and (a2) of this section, the association may
19 foreclose the claim of lien in like manner as a mortgage on real estate under power of
20 sale under Article 2A of Chapter 45 of the General Statutes. ~~Unless the declaration~~
21 ~~otherwise provides, fees, charges, late charges, fines, interest, and other charges~~
22 ~~imposed pursuant to G.S. 47F 3 102, 47F 3 107, 47F 3 107.1, and 47F 3 115 are~~
23 ~~enforceable as assessments under this section.~~

24 (a1) An association may not foreclose an association assessment lien under Article
25 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of
26 fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by
27 the association solely associated with fines imposed by the association. The association,
28 however, may enforce the lien by judicial foreclosure as provided in Article 29A of
29 Chapter 1 of the General Statutes.

30 (a2) An association shall not levy, charge, or attempt to collect a service,
31 collection, consulting, or administration fee from any lot owner unless the fee is
32 expressly allowed in the declaration. Any lien securing a debt consisting solely of these
33 fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter
34 1 of the General Statutes.

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

41 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce
42 the lien are instituted within three years after the docketing of the claim of lien in the
43 office of the clerk of superior court.

1 (d) This section does not prohibit other actions to recover the sums for which
2 subsection (a) of this section creates a lien or prohibit an association taking a deed in
3 lieu of foreclosure.

4 (e) A judgment, decree, or order in any action brought under this section shall
5 include costs and reasonable attorneys' fees for the prevailing party. If the lot owner
6 does not contest the collection of debt and enforcement of a lien after the expiration of
7 the 15-day period following notice as required in subsection (e1) of this section, then
8 reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200),
9 not including costs or expenses incurred. The collection of debt and enforcement of a
10 lien remain uncontested as long as the lot owner does not dispute, contest, or raise any
11 objection, defense, offset, or counterclaim as to the amount or validity of the debt and
12 lien asserted or the association's right to collect the debt and enforce the lien as provided
13 in this section. The attorneys' fee limitation in this subsection shall not apply to judicial
14 foreclosures or to proceedings authorized under subsection (d) of this section or
15 G.S. 47F-3-120.

16 (e1) A lot owner may not be required to pay attorneys' fees and court costs until
17 the lot owner is notified in writing of the association's intent to seek payment of
18 attorneys' fees and court costs. The notice must be sent by first-class mail to the
19 property address and, if different, to the mailing address for the lot owner in the
20 association's records. The notice shall set out the outstanding balance due as of the date
21 of the notice and state that the lot owner has 15 days from the mailing of the notice by
22 first-class mail to pay the outstanding balance without the attorneys' fees and court
23 costs. If the lot owner pays the outstanding balance within this period, then the lot
24 owner shall have no obligation to pay attorneys' fees and court costs. The notice shall
25 also inform the lot owner of the opportunity to contact a representative of the
26 association to discuss a payment schedule for the outstanding balance as provided in
27 subsection (e2) of this section and shall provide the name and telephone number of the
28 representative.

29 (e2) The association, acting through its executive board and in the board's sole
30 discretion, may agree to allow payment of an outstanding balance in installments.
31 Neither the association nor the lot owner is obligated to offer or accept any proposed
32 installment schedule. Reasonable administrative fees and costs for accepting and
33 processing installments may be added to the outstanding balance and included in an
34 installment payment schedule. Reasonable attorneys' fees may be added to the
35 outstanding balance and included in an installment schedule only after the lot owner has
36 been given notice as required in subsection (e1) of this section.

37 (f) Where the holder of a first mortgage or first deed of trust of record, or other
38 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or
39 first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be
40 liable for the assessments against such lot which became due prior to the acquisition of
41 title to such lot by such purchaser. Such unpaid assessments shall be deemed to be
42 common expenses collectible from all the lot owners including such purchaser, its heirs,
43 successors, and assigns.

1 (g) A claim of lien shall set forth the name and address of the association, the
2 name of the record owner of the lot at the time the claim of lien is filed, a description of
3 the lot, and the amount of the lien claimed."

4 **SECTION 7.** G.S. 47F-3-118 reads as rewritten:

5 "**§ 47F-3-118. Association records.**

6 (a) The association shall keep financial records sufficiently detailed to enable the
7 association to comply with this Chapter. All financial and other ~~records~~ records,
8 including records of meetings of the association and executive board, shall be made
9 reasonably available for examination by any lot owner and the lot owner's authorized
10 ~~agents~~ agents as required in the bylaws and Chapter 55A of the General Statutes. If the
11 bylaws do not specify particular records to be maintained, the association shall keep
12 accurate records of all cash receipts and expenditures and all assets and liabilities. In
13 addition to any specific information that is required by the bylaws to be assembled and
14 reported to the lot owners at specified times, the association shall make an annual
15 income and expense statement and balance sheet available to all lot owners at no charge
16 and within 75 days after the close of the fiscal year to which the information relates.
17 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the
18 association's books and records for the current or immediately preceding fiscal year may
19 be required by a vote of the majority of the executive board or by the affirmative vote of
20 a majority of the lot owners present and voting in person or by proxy at any annual
21 meeting or any special meeting duly called for that purpose.

22 (b) The association, upon written request, shall furnish to a lot owner or the lot
23 owner's authorized agents a statement setting forth the amount of unpaid assessments
24 and other charges against a lot. The statement shall be furnished within 10 business days
25 after receipt of the request and is binding on the association, the executive board, and
26 every lot owner.

27 (c) In addition to the limitations of Article 8 of Chapter 55A of the General
28 Statutes, no financial payments, including payments made in the form of goods and
29 services, may be made to any officer or member of the association's executive board or
30 to a business, business associate, or relative of an officer or member of the executive
31 board, except as expressly provided for in the bylaws or in payments for services or
32 expenses paid on behalf of the association which are approved in advance by the
33 executive board."

34 **SECTION 8.** Article 3 of Chapter 47F of the General Statutes is amended by
35 adding the following new section to read:

36 "**§ 47F-3-121. American and State flags and political sign displays.**

37 Notwithstanding any provision in any declaration of covenants, no restriction on the
38 use of land shall be construed to:

- 39 (1) Regulate or prohibit the display of the flag of the United States or
40 North Carolina, of a size no greater than four feet by six feet, which is
41 displayed in accordance with or in a manner consistent with the
42 patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing
43 the display and use of the flag of the United States unless:

- 1 a. For restrictions registered prior to October 1, 2005, the
2 restriction specifically uses the following terms:
3 1. Flag of the United States of America;
4 2. American flag;
5 3. United States flag; or
6 4. North Carolina flag.
- 7 b. For restrictions registered on or after October 1, 2005, the
8 restriction shall be written on the first page of the instrument or
9 conveyance in print that is in boldface type, capital letters, and
10 no smaller than the largest print used elsewhere in the
11 instrument or conveyance. The restriction shall be construed to
12 regulate or prohibit the display of the United States or North
13 Carolina flag only if the restriction specifically states: **THIS**
14 **DOCUMENT REGULATES OR PROHIBITS THE**
15 **DISPLAY OF THE FLAG OF THE UNITED STATES OF**
16 **AMERICA OR STATE OF NORTH CAROLINA**.

17 This subdivision shall apply to owners of property who display the
18 flag of the United States or North Carolina on property owned
19 exclusively by them and does not apply to common areas, easements,
20 rights-of-way, or other areas owned by others.

- 21 (2) Regulate or prohibit the indoor or outdoor display of a political sign by
22 an association member on property owned exclusively by the member,
23 unless:

- 24 a. For restrictions registered prior to October 1, 2005, the
25 restriction specifically uses the term 'political signs'.
- 26 b. For restrictions registered on or after October 1, 2005, the
27 restriction shall be written on the first page of the instrument or
28 conveyance in print that is in boldface type, capital letters, and
29 no smaller than the largest print used elsewhere in the
30 instrument or conveyance. The restriction shall be construed to
31 regulate or prohibit the display of political signs only if the
32 restriction specifically states: **THIS DOCUMENT**
33 **REGULATES OR PROHIBITS THE DISPLAY OF THE**
34 **POLITICAL SIGNS**.

35 Even when display of a political sign is permitted under this
36 subdivision, an association (i) may prohibit the display of political
37 signs earlier than 45 days before the day of the election and later than
38 seven days after an election day, and (ii) may regulate the size and
39 number of political signs that may be placed on a member's property if
40 the association's regulation is no more restrictive than any applicable
41 city, town, or county ordinance that regulates the size and number of
42 political signs on residential property. If the local government in which
43 the property is located does not regulate the size and number of
44 political signs on residential property, the association shall permit at

1 least one political sign with the maximum dimensions of 24 inches by
2 24 inches on a member's property. For the purposes of this
3 subdivision, 'political sign' means a sign that attempts to influence the
4 outcome of an election, including supporting or opposing an issue on
5 the election ballot. This subdivision shall apply to owners of property
6 who display political signs on property owned exclusively by them and
7 does not apply to common areas, easements, rights-of-way, or other
8 areas owned by others."

9 **SECTION 9.** G.S. 47F-1-102 reads as rewritten:

10 **"§ 47F-1-102. Applicability.**

11 (a) This Chapter applies to all planned communities created within this State on
12 or after January 1, 1999, except as otherwise provided in this section.

13 (b) This Chapter does not apply to a planned community created within this State
14 on or after January 1, 1999:

15 (1) Which contains no more than 20 lots (including all lots which may be
16 added or created by the exercise of development rights) unless the
17 declaration provides or is amended to provide that this Chapter does
18 apply to that planned community; or

19 (2) In which all lots are restricted exclusively to nonresidential purposes,
20 unless the declaration provides or is amended to provide that this
21 Chapter does apply to that planned community.

22 (c) Notwithstanding the provisions of subsection (a) of this section,
23 G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association),
24 G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and
25 (c) (Upkeep of planned community; responsibility and assessments for damages),
26 G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community
27 privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for
28 common expenses), and—G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118
29 (Association records), and G.S. 47C-3-121 (American and State flags and political sign
30 displays) apply to all planned communities created in this State before January 1, 1999,
31 unless the articles of incorporation or the declaration expressly provides to the contrary.
32 These sections apply only with respect to events and circumstances occurring on or after
33 January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or
34 plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies
35 to all planned communities created in this State before January 1, 1999, to the extent
36 necessary in construing any of the preceding sections.

37 (d) Notwithstanding the provisions of subsections (a) and (c) of this section, any
38 planned community created prior to January 1, 1999, may elect to make the provisions
39 of this Chapter applicable to it by amending its declaration to provide that this Chapter
40 shall apply to that planned community. The amendment may be made by affirmative
41 vote or written agreement signed by lot owners of lots to which at least sixty-seven
42 percent (67%) of the votes in the association are allocated or any smaller majority the
43 declaration specifies. To the extent the procedures and requirements for amendment in
44 the declaration conflict with the provisions of this subsection, this subsection shall

1 control with respect to any amendment to provide that this Chapter applies to that
2 planned community.

3 (e) This Chapter does not apply to planned communities or lots located outside
4 this State."

5 **SECTION 10.** G.S. 47C-3-102(a)(11) reads as rewritten:

6 "**§ 47C-3-102. Powers of unit owners' association.**

7 (a) Unless the declaration expressly provides to the contrary, the association,
8 even if unincorporated, may:

9 ...

10 (11) Impose charges for late payment of ~~assessments~~assessments, not to
11 exceed the greater of twenty dollars (\$20.00) per month or ten percent
12 (10%) of any assessment installment paid and, after notice and an
13 opportunity to be heard, suspend privileges or services provided by the
14 association (except rights of access to lots) during any period that
15 assessments or other amounts due and owing to the association remain
16 unpaid for a period of 30 days or longer, and levy reasonable fines not
17 to exceed one hundred ~~fifty~~dollars (~~\$150.00~~)(\$100.00)
18 (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules
19 and regulations of the association;"

20 **SECTION 11.** G.S. 47C-3-102(a)(14) reads as rewritten:

21 "(14) Assign its right to future income, including the right to receive
22 common expense ~~assessments, but only to the extent the declaration~~
23 ~~expressly so provides;~~assessments."

24 **SECTION 12.** G.S. 47C-3-103(b) reads as rewritten:

25 "(b) The executive board may not act on behalf of the association to amend the
26 declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to
27 elect members of the executive board or determine the qualifications, powers and duties,
28 or terms of office of executive board members (~~G.S. 47C-3-103(f)~~),(G.S. 47C-3-103(e)
29 and (f)), but the executive board may fill vacancies in its membership for the unexpired
30 portion of any term. Notwithstanding any provision of the declaration or bylaws to the
31 contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons
32 present and entitled to vote at any meeting of the unit owners at which a quorum is
33 present, may remove any member of the executive board with or without cause, other
34 than members appointed by the declarant."

35 **SECTION 13.** G.S. 47C-3-103 is amended by adding a new subsection to
36 read:

37 "(g) The association shall publish the names and addresses of all officers and
38 board members of the association within 30 days of the election."

39 **SECTION 14.** G.S. 47C-3-107.1 reads as rewritten:

40 "**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and**
41 **suspension of condominium privileges or services.**

42 ~~The bylaws of the association may provide for a hearing before an adjudicatory~~
43 ~~panel to determine if a unit owner should be fined not to exceed one hundred fifty~~
44 ~~dollars (~~\$150.00~~) for a violation of the declaration, bylaws or rules and regulations of~~

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

23 **SECTION 15.** G.S. 47C-3-108 reads as rewritten:

24 "**§ 47C-3-108. Meetings.**

25 (a) A meeting of the association shall be held at least once each year. Special
26 meetings of the association may be called by the president, a majority of the executive
27 board, or by unit owners having twenty percent (20%) or any lower percentage specified
28 in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in
29 advance of any meeting, the secretary or other officer specified in the bylaws shall
30 cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
31 address of each unit or to any other mailing address designated in writing by the unit
32 owner, or sent by electronic means, including by electronic mail over the Internet, to an
33 electronic mailing address designated in writing by the unit owner. The notice of any
34 meeting must state the time and place of the meeting and the items on the agenda,
35 including the general nature of any proposed amendment to the declaration or bylaws,
36 any budget changes, and any proposal to remove a director or officer.

37 (b) Meetings of the executive board shall be held as provided in the bylaws. At
38 regular intervals, the executive board meeting shall provide unit owners an opportunity
39 to attend a portion of an executive board meeting and to speak to the executive board
40 about their issues and concerns. The executive board may place reasonable restrictions
41 on the number of persons who speak on each side of an issue and may place reasonable
42 time restrictions on persons who speak.

1 (c) Except as otherwise provided for in the bylaws, meetings of the association
2 and executive board shall be conducted in accordance with the most recent edition of
3 Robert's Rules of Order."

4 **SECTION 16.** G.S. 47C-3-116 reads as rewritten:

5 **"§ 47C-3-116. Lien for assessments.**

6 (a) Any assessment levied against a unit remaining unpaid for a period of 30
7 days or longer shall constitute a lien on that unit when a claim of lien is filed of record
8 in the office of the clerk of superior court of the county in which the unit is located in
9 the manner provided therefor by Article 8 of Chapter 44 of the General Statutes herein.
10 Unless the declaration otherwise provides, fees, charges, late charges and other charges
11 imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are
12 enforceable as assessments under this section. Except as provided in subsections (a1)
13 and (a2) of this section, ~~The~~ the association's lien may be foreclosed in like manner as a
14 mortgage on real estate under power of sale under Article 2A of Chapter 45 of the
15 General Statutes. ~~Unless the declaration otherwise provides, fees, charges, late charges,~~
16 finer, and interest charged pursuant to G.S. 47C 3 102(10), (11), and (12),
17 G.S. 47C 3 107(d) and 47C 3 107.1, are enforceable as assessments under this section.

18 (a1) An association may not foreclose an association assessment lien under Article
19 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of
20 finer imposed by the association, interest on unpaid fines, or attorneys' fees incurred by
21 the association solely associated with fines imposed by the association. The association,
22 however, may enforce the lien by judicial foreclosure as provided in Article 29A of
23 Chapter 1 of the General Statutes.

24 (a2) An association shall not levy, charge, or attempt to collect a service,
25 collection, consulting, or administration fee from any unit owner unless the fee is
26 expressly allowed in the declaration. Any lien secured by debt consisting solely of these
27 fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter
28 1 of the General Statutes.

29 (b) The lien under this section is prior to all other liens and encumbrances on a
30 unit except (i) liens and encumbrances (specifically including, but not limited to, a
31 mortgage or deed of trust on the unit) recorded before the docketing of the lien in the
32 office of the clerk of superior court, and (ii) liens for real estate taxes and other
33 governmental assessments or charges against the unit. This subsection does not affect
34 the priority of mechanics' or materialmen's liens.

35 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce
36 the lien are instituted within three years after the docketing thereof in the office of the
37 clerk of superior court.

38 (d) This section does not prohibit actions to recover sums for which subsection
39 (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

40 (e) A judgment, decree, or order in any action brought under this section ~~must~~
41 shall include costs and reasonable attorneys' fees for the prevailing party. If the unit
42 owner does not contest the collection of debt and enforcement of a lien after the
43 expiration of the 15-day period following notice as required in subsection (e1) of this
44 section, then reasonable attorneys' fees shall not exceed one thousand two hundred

1 dollars (\$1,200), not including costs or expenses incurred. The collection of debt and
2 enforcement of a lien remain uncontested as long as the unit owner does not dispute,
3 contest, or raise any objection, defense, offset, or counterclaim as to the amount or
4 validity of the debt and lien asserted or the association's right to collect the debt and
5 enforce the lien as provided in this section. The attorneys' fee limitation in this
6 subsection shall not apply to judicial foreclosures or proceedings authorized under
7 subsection (d) of this section or G.S. 47F-4-117.

8 (e1) A unit owner may not be required to pay attorneys' fees and court costs until
9 the unit owner is notified in writing of the association's intent to seek payment of
10 attorneys' fees and court costs. The notice must be sent by first-class mail to the
11 property address and, if different, to the mailing address for the unit owner in the
12 association's records. The notice shall set out the outstanding balance due as of the date
13 of the notice and state that the unit owner has 15 days from the mailing of the notice by
14 first-class mail to pay the outstanding balance without the attorneys' fees and court
15 costs. If the unit owner pays the outstanding balance within this period, then the unit
16 owner shall have no obligation to pay attorneys' fees and court costs. The notice shall
17 also inform the unit owner of the opportunity to contact a representative of the
18 association to discuss a payment schedule for the outstanding balance as provided in
19 subsection (e2) of this section and shall provide the name and telephone number of the
20 representative.

21 (e2) The association, acting through its executive board and in the board's sole
22 discretion, may agree to allow payment of an outstanding balance in installments.
23 Neither the association nor the unit owner is obligated to offer or accept any proposed
24 installment schedule. Reasonable administrative fees and costs for accepting and
25 processing installments may be added to the outstanding balance and included in an
26 installment payment schedule. Reasonable attorneys' fees may be added to the
27 outstanding balance and included in an installment schedule only after the unit owner
28 has been given notice as required in subsection (e1) of this section.

29 (f) Where the holder of a first mortgage or first deed of trust of record, or other
30 purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage
31 or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be
32 liable for the assessments against such unit which became due prior to acquisition of
33 title to such unit by such purchaser. Such unpaid assessments shall be deemed to be
34 common expenses collectible from all the unit owners including such purchaser, and its
35 heirs, successors and assigns.

36 (g) A claim of lien shall set forth the name and address of the association, the
37 name of the record owner of the lot at the time the claim of lien is filed, a description of
38 the lot, and the amount of the lien claimed."

39 **SECTION 17.** G.S. 47C-3-118 reads as rewritten:

40 **"§ 47C-3-118. Association records.**

41 (a) The association shall keep financial records sufficiently detailed to enable the
42 association to comply with this chapter. All financial and other ~~records~~ records,
43 including records of meetings of the association and executive board, shall be made
44 reasonably available for examination by any unit owner and the unit owner's his

1 authorized ~~agents~~ agents as required by the bylaws and by Chapter 55A of the General
2 Statutes if the association is a nonprofit corporation. If the bylaws do not specify
3 particular records to be maintained, the association shall keep accurate records of all
4 cash receipts and expenditures and all assets and liabilities. In addition to any specific
5 information that is required by the bylaws to be assembled and reported to the unit
6 owners at specified times, the association shall make an annual income and expense
7 statement and balance sheet available to all unit owners at no charge and within 75 days
8 after the close of the fiscal year to which the information relates. Notwithstanding the
9 bylaws, a more extensive compilation, review, or audit of the association's books and
10 records for the current or immediately preceding fiscal year may be required by a vote
11 of the majority of the executive board or by the affirmative vote of a majority of the unit
12 owners present and voting in person or by proxy at any annual meeting or any special
13 meeting duly called for that purpose.

14 (b) The association, upon written request, shall furnish a unit owner or the unit
15 owner's authorized agents a statement setting forth the amount of unpaid assessments
16 and other charges against a unit. The statement shall be furnished within 10 business
17 days after receipt of the request and is binding on the association, the executive board,
18 and every unit owner.

19 (c) In addition to the limitations of Article 8 of Chapter 55A of the General
20 Statutes, no financial payments, including payments made in the form of goods and
21 services, may be made to any officer or member of the association's executive board or
22 to a business, business associate, or relative of an officer or member of the executive
23 board, except as expressly provided for in the bylaws or in payments for services or
24 expenses paid on behalf of the association which are approved in advance by the
25 executive board."

26 **SECTION 18.** Article 3 of Chapter 47C of the General Statutes is amended
27 by adding the following new section to read:

28 "**§ 47C-3-121. American and State flags and political sign displays.**

29 Notwithstanding any provision in any declaration of covenants, no restriction on the
30 use of land shall be construed to:

31 (1) Regulate or prohibit the display of the flag of the United States or
32 North Carolina, of a size no greater than four feet by six feet, which is
33 displayed in accordance with or in a manner consistent with the
34 patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing
35 the display and use of the flag of the United States unless:

36 a. For restrictions registered prior to October 1, 2005, the
37 restriction specifically uses the following terms:

- 38 1. Flag of the United States of America;
- 39 2. American flag;
- 40 3. United States flag; or
- 41 4. North Carolina flag.

42 b. For restrictions registered on or after October 1, 2005, the
43 restriction shall be written on the first page of the instrument or
44 conveyance in print that is in boldface type, capital letters, and

1 no smaller than the largest print used elsewhere in the
2 instrument or conveyance. The restriction shall be construed to
3 regulate or prohibit the display of the United States or North
4 Carolina flag only if the restriction specifically states: 'THIS
5 DOCUMENT REGULATES OR PROHIBITS THE
6 DISPLAY OF THE FLAG OF THE UNITED STATES OF
7 AMERICA OR STATE OF NORTH CAROLINA'.

8 This subdivision shall apply to owners of property who display the
9 flag of the United States or North Carolina on property owned
10 exclusively by them and does not apply to common areas, easements,
11 rights-of-way, or other areas owned by others.

12 (2) Regulate or prohibit the indoor or outdoor display of a political sign by
13 an association member on that member's property owned exclusively
14 by the member, unless:

15 a. For restrictions registered prior to October 1, 2005, the
16 restriction specifically uses the term 'political signs'.

17 b. For restrictions registered on or after October 1, 2005, the
18 restriction shall be written on the first page of the instrument or
19 conveyance in print that is in boldface type, capital letters, and
20 no smaller than the largest print used elsewhere in the
21 instrument or conveyance. The restriction shall be construed to
22 regulate or prohibit the display of political signs only if the
23 restriction specifically states: 'THIS DOCUMENT
24 REGULATES OR PROHIBITS THE DISPLAY OF THE
25 POLITICAL SIGNS'.

26 Even when display of a political sign is permitted under this
27 subdivision, an association (i) may prohibit the display of political
28 signs earlier than 45 days before the day of the election and later than
29 seven days after an election day, and (ii) may regulate the size and
30 number of political signs that may be placed on a member's property if
31 the association's regulation is no more restrictive than any applicable
32 city, town, or county ordinance that regulates the size and number of
33 political signs on residential property. If the local government in which
34 the property is located does not regulate the size and number of
35 political signs on residential property, the association shall permit at
36 least one political sign with the maximum dimensions of 24 inches by
37 24 inches on a member's property. For the purposes of this
38 subdivision, 'political sign' means a sign that attempts to influence the
39 outcome of an election, including supporting or opposing an issue on
40 the election ballot. This subdivision shall apply to owners of property
41 who display political signs on property owned exclusively by them and
42 does not apply to common areas, easements, rights-of-way, or other
43 areas owned by others."

44 SECTION 19. G.S. 47C-1-102 reads as rewritten:

1 "§ 47C-1-102. Applicability.

2 (a) This Chapter applies to all condominiums created within this State after
3 October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106
4 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107
5 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws),
6 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of
7 Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit
8 Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1
9 (~~Charges for Late Payment, Fines~~Procedures for fines and suspension of condominium
10 privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability),
11 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for
12 Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags
13 and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action;
14 Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in
15 construing any of those sections, apply to all condominiums created in this State on or
16 before October 1, 1986, unless the declaration expressly provides to the contrary. Those
17 sections apply only with respect to events and circumstances occurring after October 1,
18 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or
19 plans of those condominiums.

20 (b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to
21 condominiums created after October 1, 1986 and do not invalidate any amendment to
22 the declaration, bylaws, and plats and plans of any condominium created on or before
23 October 1, 1986 if the amendment would be permitted by this chapter. The amendment
24 must be adopted in conformity with the procedures and requirements specified by those
25 instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to
26 any person any rights, powers, or privileges permitted by this chapter, all correlative
27 obligations, liabilities, and restrictions in this chapter also apply to that person.

28 (c) This chapter does not apply to condominiums or units located outside this
29 State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108)
30 apply to all contracts for the dispositions thereof signed in this State by any party unless
31 exempt under G.S. 47C-4-101(b)."

32 **SECTION 20.** This act becomes effective January 1, 2006, and applies to
33 violations occurring and proceedings commenced on or after that date and to fiscal
34 years beginning on or after that date.