

HOUSE SELECT COMMITTEE
on HOMEOWNERS ASSOCIATIONS



FINAL REPORT

*REPORT TO THE
2011 SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA*

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January 19, 2011

TO THE MEMBERS OF THE 2010 GENERAL ASSEMBLY

The House Select Committee on Homeowners Associations herewith submits to you for your consideration its report pursuant to G.S. 120-19.6(al) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

Representative William C. McGee

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Co-Chairs
House Select Committee on Homeowners Associations

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**Office of Speaker Joe Hackney
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HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS

**TO THE HONORABLE MEMBERS OF THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

Section 1. The House Select Committee on Homeowners Associations (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 7 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. Vacancies of the Committee are filled by the Speaker of the House of Representatives, and the Speaker may dissolve the Committee at any time.

Representative Weiss	Co-Chair
Representative McGee	Co-Chair
Representative Cleveland	
Representative Earle	
Representative Heagarty	
Representative Howard	
Representative Wray	

Section 3. The Committee may study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate.

Section 4. The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Co-Chairs of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 17th day of November, 2009.



Joe Hackney,
Speaker of the House of Representatives

SUMMARY of EVENTS

The House Select Committee on Homeowners Associations was established by the Speaker of the House of Representative pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representative of the 2009 General Assembly. The Committee consists of the following seven members: Rep. Jennifer Weiss (Co-Chair), Rep. Bill McGee (Co-Chair), Rep. George Cleveland, Rep. Beverly Earle, Rep. Chris Heagarty, Rep. Julia Howard, and Rep. Michael Wray.

The charge of the Committee is to study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations. The Committee may also study any other relevant issue that it deems appropriate. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, and shall submit a final report to the members of the House of Representatives on or before February 1, 2011.

The Committee met five times between the adjournment of the 2009 Regular Session and the start of 2010 Regular Session. The Committee also held a public hearing on February 2, 2010. The Committee held three additional meeting after the short session.

COMMITTEE PROCEEDINGS

January 13, 2010 Meeting

At the initial meeting of the Committee, staff read the Charge to the Committee and gave an overview of the current law regarding North Carolina's Condominium Act and Planned Community Act. Recent changes to these Acts were also discussed. Legislation enacted by the General Assembly in 2005 was geared toward providing additional safeguards and protections for homeowners. These changes included the following:

- Limiting the use of foreclosure by power of sale if the debt securing the lien on a homeowner's lot consisted solely of fines imposed by the homeowners association (HOA).
- Limiting the payment of attorneys' fees and court when there is an overdue assessment on a homeowner's property.
- Expanding the duties of the HOA to make available to the homeowners the HOA's books and records.
- Restricting the ability of covenants to regulate the display of a U.S. or North Carolina flags and the display of political signs.

In 2009, the following legislation was enacted:

- Added language to insure that homeowners receive notice of a filing of the claim of lien prior to institution of foreclosure proceedings.
- Clarified that any new restrictive covenants, created on or after December 1, 2009, would be invalidated if these covenants would prohibit the installation of solar

collector devices in planned communities and condominium communities. Legislation limiting the regulation of solar collectors was enacted in 2007. The Committee then discussed future meeting dates.

February 2, 2010 Public Hearing

The Committee heard from approximately 35 speakers. The comments ranged from providing more disclosure for homeowners, alleviating problems with abuse of power by board members when enforcing restrictive covenants, limiting foreclosure on delinquent assessments, and maintaining current foreclosure law.

February 16, 2009 Meeting

The Committee heard from Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce. Mr. Leker discussed issues related to the limitations on regulating solar collectors, specifically as it relates to limiting solar collectors on the basis of visibility.

Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts, presented comments regarding the need for legislation to prevent defects in title, questionable procedures, and abuses and overcharges in HOA lien foreclosures. He emphasized that there are protections for homeowners facing foreclosure of deeds of trusts, but no parallel protections for HOA foreclosures.

Phil Telfer, Special Deputy Attorney General, with the Consumer Protection Division of the North Carolina Department of Justice discussed the HOA complaints handled by the Division. He indicated that there were approximately 38 written complaints in 2009 and that the Division gets approximately 100 calls per year. Most of these calls relate to services offered by HOAs; fees charged, billing practices, and recordkeeping of HOAs; and foreclosures by HOAs. Mr. Telfer indicated that the most benefit that the Division can offer is education prior to purchase of a lot.

March 4, 2010 Meeting

The Committee heard remarks from Miriam Baer, Legal Counsel and Assistant Director, of the Legal Services Division within the North Carolina Real Estate Commission. Ms. Baer, commented on citizen inquiries and complaints to the Commission regarding HOAs, the Commission's jurisdiction in responding to complaints, and the real estate broker's duties with regard to disclosing to consumers the existence of HOAs and restrictive covenants.

Rob Baer, President of the North Carolina Chapter of the Community Associations Institute (CAI) spoke on the role of the CAI to provide the latest information on community association management and governance to volunteer HOA boards. Mr. Baer indicated that the CAI advocated for legislative and regulatory policies that support responsible governance and effective management.

Al Ripley, Director of the Consumer Action Network at the North Carolina Justice Center, discussed certain minimum protections for homeowners that the Committee should consider.

March 31, 2010 Meeting

The Committee was given an overview of the Uniform Common Interest Ownership Act and the Uniform Common Interest Owners Bill of Rights Act by Carl, H. Lisman, an attorney and Commissioner with the National Conference of Commissions on Uniform State Laws. Mr. Lisman discussed the Acts and how they compare to North Carolina's Planned Community and Condominium Acts.

Bob Leker, Renewables Program Manager in the State Energy Office of the North Carolina Department of Commerce, was asked to speak again to the Committee regarding concerns about the visibility restrictions on the installation of solar panels. Mr. Leker discussed possible solutions and gave examples of how other states have addressed this issue.

April 14, 2010 Meeting

Committee staff presented a summary of the five previous meetings and offered proposed findings distilled from the meetings. The committee reviewed the seven proposed findings relating to:

- Demographics
- Board Accountability
- Disclosure
- Declarant Transfer Issues
- Consumer Protection
- Foreclosure Issues
- Clarification of the Solar Access Law

The committee voted to adopt the findings and to use them to guide the work of the committee after the short session.

October 20, 2010 Meeting

After a review of the seven findings, the committee heard from several individuals who wanted to relate their experiences with homeowner associations. Donna Staley, retired educator and Chair of the Forsyth County Library Board of Trustees, described problems she had relating to board accountability and consumer protection issues. Lou DeVita and Frank Wiedman from Brunswick County addressed the committee on declarant transfer issues. Finally, the committee heard from Lieutenant Commander, United States Navy, Retired, Gerard T. Lew. Lieutenant Commander Lew talked about foreclosure issues.

The Co-chairs then asked staff to present a set of options designed to address each of the findings. The options for Findings 2 and 5 (Board Accountability and Consumer Protection) were combined because of the close relationship between the two issues. Many of the options were derived from the Uniform Common Interest Owners Bill of Rights and were developed by the Uniform Law Commission.

December 2, 2010 Meeting

The Committee reviewed the options presented at the previous meeting. After discussion, the committee agreed to pursue several of the options. The Co-Chairs offered to present a legislative proposal at a future meeting.

January 19, 2011 Meeting

The Committee studied the draft report, discussed the substantive points, committee findings and proposed options. After review the Committee Co-Chairs called for the Report's adoption. Upon adoption the Committee Cochairs and members offered last thoughts and reflections of the activities and outcomes resulting from the Committee's work prior to adjournment.

COMMITTEE FINDINGS

FINDING 1: Demographics.

Issues associated with homeowners associations can reasonably be expected to increase rather than decrease as the number of associations operating in the State grows along with population.

With regard to current statistics, there is no mandatory registry of homeowners associations and as such, an exhaustive list of associations does not exist. According to Homeowners Associations of North Carolina, however, there are over 17,326 homeowner associations in North Carolina collectively representing over 2,025,000 households or 53% of the owner occupied households in the State.¹

In recent years, North Carolina's population has grown rapidly. Estimates prepared by the U.S. Census Bureau show that between 2000 and 2005, the State had the ninth-highest growth rate (7.88 percent) among the fifty states and the District of Columbia, reaching a population of 8,683,242. Projections of population growth between 2000 and 2030 prepared by the State demographer indicate that the State total population is expected to reach about 12 million by 2030. The U.S. Census Bureau has projected that North Carolina will become the seventh most populous state by 2030, with more than 12.2 million residents. This move up from the current eleventh place is expected to happen as the State passes New Jersey, Michigan, Ohio, and Georgia in total population.²

¹See <http://www.hoa-nc.com/About.aspx>

²See <http://www.ncmuseumofhistory.org/collateral/articles/S06.recent.population.change.pdf>. Data from article entitled "Recent Population Change in North Carolina" by Dr. Alfred W. Stuart from *Tar Heel Junior Historian* 45:2 (spring 2006).

As robust growth in the State's population continues to occur over the next two decades, corresponding growth in housing construction and the number of homeowners associations is likely to dovetail.

FINDING 2: Board Accountability.

The Committee finds that there is a need to provide homeowners with better recourse when seeking to challenge actions by the Board of Directors.

The most common complaint expressed by homeowners both at the public hearing and by correspondence is the lack of an easily accessible and affordable method for homeowners to challenge the actions of the Board of Directors. The Committee received numerous reports from individuals describing flagrant violations of the statute and/or bylaws of the association. These complaints dealt with issues such as failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants. However, the only recourse currently available to homeowners in most cases is to commence a civil action. This option is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense.

Several homeowners suggested that there should be a less costly method of enforcing the statute and resolving disputes with the Board. These suggestions included designating a State agency to enforce the statute, or authorizing mandatory mediation or other methods of alternative dispute resolution.

FINDING 3: Disclosure.

The Committee finds that there is a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding by the homeowners at the time they purchased their homes of the existence of restrictive covenants applicable to real property located in planned communities.

It does not appear that present disclosure practices are adequate in notifying prospective purchasers of the nature of the restrictions upon the real property. Sellers of homes in planned communities are in the best position to provide this information to prospective purchasers. G.S. 47E-4 requires that sellers of residential real property furnish to purchasers a residential property disclosure statement, and requires the Real Estate Commission to develop a standard disclosure statement that must include, among other things, "the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property. The current disclosure statement requires disclosure of "violations of zoning ordinances, restrictive covenants or other land-use restrictions or building codes" but does not require sellers to disclose the existence of restrictive covenants if there are no violations. Sellers should be required to disclose the existence of any restrictive covenants affecting the use of the real property, and to furnish a copy of all such restrictive covenants to prospective purchasers. The most efficient way to accomplish the needed disclosure appears to be for the Real Estate

Commission to amend the disclosure form to include these requirements. Such amendment would be within the scope of the present statutory authority granted to the Commission pursuant to G.S. 47E-4. The Committee is informed that the Real Estate Commission is prepared to initiate a rulemaking proceeding for the purpose of implementing revisions to the disclosure statement as recommended by the Committee.

FINDING 4: Declarant Transfer Issues.

The Committee finds that the law should be clarified with regard to the obligations of the declarant.

Unlike the Condominium Act, the Planned Community Act does not limit the time period during which the declarant (developer) may maintain control of the association. Several homeowners related cases of abuses by the declarant including refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems.

FINDING 5: Consumer Protection.

The Committee finds that there is a need for additional consumer protections to better protect homeowners from abusive homeowner association practices.

Several homeowners complained that the law gives homeowners few rights to challenge the actions of the association's board. The board can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of the association, cause additional improvements to be made as part of the common elements, and impose fees and fines. Homeowner's have complained that these and other actions are often taken without giving notice or an opportunity to vote on such issues to homeowners.

In addition, there have been many complaints about unreasonable actions by the Board, such as arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, and abuse of the foreclosure process.

FINDING 6: Foreclosure Issues.

The Committee finds that although the Planned Community Act authorizes the use of foreclosure proceedings to satisfy homeowner association liens, the foreclosure statute was never intended for this purpose and there are a number of incongruities between the statutes. This issue was raised by the legal counsel to the Administrative Office of the Courts.

In addition, the law authorizes "power of sale foreclosure" to recover unpaid assessments and "judicial foreclosure" to recover unpaid fines and fees. Several individuals suggested that the statute should be amended to prohibit or limit the use of foreclosure in all or some cases.

FINDING 7: Clarification of the Solar Access Law.

The Committee heard from the State Energy Office and a few homeowners that there is some confusion with regard to the law that invalidates any new restrictive covenants which prohibit the installation of solar collector devices. The law contains an exception if the solar device is visible from a roof slope or façade or if it faces a public access way. Some homeowner associations have apparently used the exception to exclude solar devices altogether. It was suggested that the law be clarified to limit or remove the visibility exception, as has been done in a number of other states.

OPTIONS FOR COMMITTEE ACTION

Finding 2 – Options for Committee Action - Board Accountability.

Need to provide homeowners with better recourse when seeking to challenge actions by HOA Boards.

- Committee received complaints concerning flagrant violations of the applicable statutes and/or HOA bylaws (failing to give required notice of meetings, holding meetings in secret, failing to provide records to homeowners when requested, unauthorized use of association funds, and arbitrary enforcement of covenants)
- Only recourse currently available to homeowners in most cases is to commence a civil action, which is cost prohibitive for many homeowners and also puts the homeowner in the position of having to pay to pursue the litigation and at the same time funding the Board's defense

Finding 3 – Options for Committee Action - Disclosure.

The committee found a need for greater disclosure by sellers of homes in planned communities concerning the restrictive covenants applicable to such real property.

- Complaints by homeowners in planned communities often appear to reflect a lack of awareness or understanding of the existence of restrictive covenants at the time they purchased their homes
- G.S. 47E-4 requires sellers of residential real property to furnish purchasers with a residential property disclosure statement, using a form developed by the Real Estate Commission (“REC”), which must include, among other things, “restrictive covenants affecting the real property.” The current disclosure statement, however, only requires disclosure of violations of restrictive covenants.

Options to achieve the goal of greater disclosure include:

1. Revising the Residential Property Disclosure Form developed by the REC pursuant to G.S. 47E-4 to require disclosure of HOAs and restrictive covenants;

2. Amending Chapter 47F, the Planned Community Act, to require sellers to provide prospective purchasers with specific information and documents relating to HOAs and the restrictions on the property being sold; and
3. Requiring that sellers provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

Each of these options is discussed more fully below.

Option 1: Revise the Residential Property Disclosure Form to require sellers of property in planned communities to disclose the existence of HOAs and restrictive covenants.

The REC is statutorily required to develop the disclosure form that is mandated by G.S. 47E-4. Although the current statute can be read as requiring disclosure of covenants restricting the use of property, the current REC form provides a space only for disclosure of conditions that violate a restrictive covenant. There is no current requirement in the statute that the seller disclose the existence of a homeowners association.

The desired disclosure of the existence of restrictive covenants can be achieved either by: 1) formally requesting the Real Estate Commission to amend the disclosure form; or 2) amending G.S. 47E-4 to require the REC to make this change to the form. Because there is no reference in G.S. 47E-4 to homeowners associations, a statutory amendment would be required to accomplish this disclosure.

In addition to revising the disclosure form, the disclosure requirement would be strengthened by:

- eliminating the option of making “no representation” currently permitted under G.S. 47E-4(a)(2) (only with respect to the new disclosure of HOAs and restrictive covenants);
- amending G.S. 47E-2(9), which currently exempts “the first sale of a dwelling never inhabited” from the disclosure requirements of G.S. 47E-4, to require the new disclosure of HOAs and restrictive covenants in first sales of dwellings never inhabited.

Option 2: Amend the Planned Community Act to require all sellers of property in planned communities to provide prospective purchasers with a copy of the declaration, covenants, bylaws, and the association rules and regulations.

This is the approach taken by the Uniform Common Interest Ownership Act (“UCIOA”). Under the UCIOA, the unit owners association is required, upon request by a unit owner, to provide a certificate containing the information needed by the owner to make the required disclosures, and the association is permitted to charge the owner a reasonable fee for the preparation of the certificate. In the case of declarants or dealers, the UCIOA provides that “unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.” UCIOA Section 4-108(a). In the case of resales, “the purchase contract is voidable by the purchaser until the

certificate has been provided and for [five] days thereafter or until conveyance, whichever first occurs." UCIOA Section 4-109(c).

Unlike the Planned Community Act, both the UCIOA and the North Carolina Condominium Act mandate full disclosure (including furnishing copies of the declaration, recorded covenants, and association bylaws, rules and regulations) in sales of condo units by a declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser. G.S. 47C-4-102(c). In the case of resales of units, however, the Condominium Act stops short of the UCIOA requirement for disclosure, mandating only that the seller furnish a prospective purchaser with "a statement setting forth the monthly common expense assessment and any other fees payable by unit owners." G.S. 47C-4-109.

Option 3: Require sellers to provide prospective purchasers with general written information concerning HOAs and the types of restrictions that may be applicable to a home located in a planned community.

This objective could be achieved by amending the Planned Community Act to require sellers to provide prospective buyers of lots in planned communities with a brochure to be developed by the REC advising them in simple, understandable terms of basic powers of HOAs, examples of restrictions to which they may be subject, and how to obtain a copy of the governing documents containing the restrictions that apply to the property in question.

Finding 4 - Options for Committee Action - Declarant Transfer Issues.

The committee found that the law should be clarified with regard to the obligations of a declarant (developer).

- Complaints received concerning abuses by a declarant (refusing to transfer control to the homeowners, failing to pay assessments on declarant-owned property, failing to properly record amendments to the declaration, and failing to properly complete actions required of the declarant such as approved stormwater systems)
- Unlike the Condominium Act, the Planned Community Act does not limit the time period in which a declarant may maintain control of the association

Options to achieve the goal of clarifying the obligations of a declarant include adding language, which is already in the Condominium Act, to the Planned Community Act:

1. Specifying time limit for declarant control
2. Specifying obligations and liabilities of declarant who transfers declarant interest
3. Allowing homeowner association to terminate contracts and leases entered into by declarant during period of declarant control
4. Providing homeowner association with right of action and remedy against declarant for breach of contract or tort during period of declarant control

Each of these options is discussed more fully below:

Option 1: Add language to the Planned Community Act (PCA) specifying the end of declarant control.

Currently, the Planned Community Act merely states that the declaration may provide for a period of declarant control. (G.S. 47F-3-103(d)). In contrast, the Condominium Act in G.S. 47C-3-103(d) specifies when declarant control must end: "Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 120 days after the conveyance of 75% of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised."

Option 2: Add language to the Planned Community Act specifying the extent of the obligations and liabilities imposed upon a declarant who transfers his or her declarant interest in a lot or condominium to a third party.

The Condominium Act in G.S. 47C-3-104 sets out the liability of transferor declarant when there is a transfer of any special declarant right.³ The transferor declarant remains liable for any obligation or liability arising before the transfer. Also if the right is transferred to an affiliate of the declarant, the transferor remains liable.

Option 3: Add language to the PCA allowing the association to terminate certain contracts and leases entered into by the declarant during the period of declarant control

Currently G.S. 47F-3-105 merely allows the termination of contracts and leases entered into before the executive board elected by the lot owners takes office, if the contract or lease is not bona fide or was unconscionable to the lot owners. In contrast, the Condominium Act, in G.S. 47C-3-105, also expands the authority to terminate the following contracts and leases of the declarant: (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, and (2) any other contract or lease between the association and a declarant or an affiliate of a declarant.

Option 4: Add language to the PCA to provide the association or lot owners with a right of action and remedy against the declarant for losses to the plaintiff caused by the declarant's tort or breach of contract during the period of declarant control.

Both the PCA and Condominium Act toll any statute of limitation affecting the association's right of action under this section until the period of declarant control terminates. However, the Condominium Act in G.S. 47C-3-111 (c) and (d) also addresses the declarant's liability during a period of declarant control: If an action is brought against the association for a wrong that occurred during a period of declarant control and the association gives the declarant reasonable

³ The Planned Community Act and the Condominium Act define "special declarant rights" as rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control. (See G.S. 47C-3-104 and G.S. 47F-1-103)

notice of, and an opportunity to defend, against the action, the declarant is liable to the association in either tort or contract. Specifically, the declarant is liable to the association for all tort losses suffered that are not covered by insurance carried by the association and all losses the association would not have incurred but for a breach of contract.⁴ If the declarant is liable to the association, it is also responsible for all litigation expenses including reasonable attorneys' fees incurred by the association.

Finding 5 – Options for Committee Action – Consumer Protection.

Need for additional consumer protections to better protect homeowners from abusive HOA practices

- Complaints received about unreasonable actions by boards include: arbitrary enforcement of covenants, excessive fines and attorney's fees, refusal to hold fair and open elections of officers, abuse of the foreclosure process, and failure of the law to give homeowners enough rights to challenge the actions of HOA Boards
- Boards can legally adopt and amend rules and regulations, make contracts and incur liabilities on behalf of an association, cause additional improvements to be made as part of the common elements and assess homeowners for those improvements, and such actions are often taken without giving notice or an opportunity to vote to homeowners.

Options to address issues concerning Board Accountability (Finding 2)/ Options to address issues concerning Consumer Protection – (Finding 5), include:

- ***Adopt the Uniform Common Interest Owners Bill of Rights Act. (UCIOBORA).***

In 2008, the Uniform Law Commission (the “ULC”) promulgated a free-standing and relatively short Uniform Act that addresses all of the ‘association versus unit owner’ issues touched on during the drafting of the 2008 Uniform Common Interest Ownership Act (UCIOA) amendments. The free-standing Act is known as the Uniform Common Interest Owners Bill Of Rights Act or “UCIOBORA”. Highlights of the UCIOBORA are:

Powers and duties of a unit owners association and the executive board are outlined.

Treatment of association bylaws, rulemaking, operation and governance, notice methods, unit owners and board meetings, and meeting and voting procedures are also provided, as are governing provisions for the adoption of budgets and special assessments.

UCIOBORA encompasses the authority to discipline unit owners, within limits, for failure to pay assessments, and the executive board of a unit owners association is given flexibility in determining whether to enforce the letter of each provision of its declaration, bylaws, or rules, or decline to enforce or compromise on such. The right of

⁴ However, G.S. 47C-3-111(c) does not impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

an association to proceed in foreclosure on a lien against a unit owner is revised and limited, and the act provides priority for the application of delinquent sums.

Record keeping requirements and guidance are provided in greater detail, and are drawn from FOIA requirements and other sources.

- ***Allow/Require Alternative Dispute Resolution*** -- Authorize or require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding. (see UCIOBORA § 8(a)(3)).

No similar provisions exist under the Condo Act or the Planned Community Act (PCA).

- ***Add provisions governing board discretion in enforcement.*** UCIOBORA sets forth a list of considerations a board must evaluate in a determination not to take enforcement action in a given situation. UCIOBORA § 8(b) provides:

(b) The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) the association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The executive board's decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

No similar provisions exist under the Condo Act or the PCA.

- ***Establish open meeting requirements.*** (UCIOBORA § 12). Among other things, UCIOBORA provides that meetings of HOA boards and committees must be open to unit owners, except during executive sessions (and specifies for what matters executive sessions may be held).

Provisions under the Condo Act (G.S. 47C-3-108) and the PCA (G.S. 47F-3-108) specify that meetings of an association must be held at least once a year and, at regular intervals, an executive board must provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns.

- **Enhance record-keeping requirements.** UCIOBORA § 16 imposes significantly greater record-keeping requirements on HOAs than either the Condo Act (see G.S. 47C-3-118) or the PCA (see G.S. 47F-3-118). In addition to detailed financial records, UCIOBORA requires that minutes of all meetings, an association's organizational documents, as well as rules currently in effect be made available for examination and copying by a unit owner during reasonable business hours or at a mutually convenient time and location; and upon five days' notice.

The Condo Act and the PCA provide that, at a minimum, the association must keep accurate records of all cash receipts and expenditures and all assets and liabilities, and must make an annual income and expense statement available to all lot owners – these records must be made reasonably available for examination by any lot owner. Further, an association, upon written request, must furnish to a lot owner a statement setting forth the amount of unpaid assessments and other charges against a lot.

- **Procedures for rules and assessments:** Institute procedures a HOA must follow that prior to: (1) adopting, amending, or repealing any rule; or (2) adopting budgets or special assessment. (UCIOBORA §§ 17, 20).

No similar provisions exist under the Condo Act or the PCA with regard to rules or imposition of special assessments. Both do, however, specify processes that must be followed concerning adoption of association budgets (see G.S. 47C-3-103(c) and G.S. 47F-3-103(c)).

- **Installment payments:** Require an HOA to accept payment of outstanding balances from homeowners in installments

HOA *may* do so under current North Carolina law (see Condo Act (47C-3-1169e2)) and PCA (47F-3-116(e2)).

- **Punitive Damages:** Allow imposition of punitive damages for a HOAs willful failure to comply with consumer protection provisions. (see UCIOBORA § 21).

No similar provisions exist under the Condo Act or the PCA.

- **Mandatory Registration:** Create mandatory registry of associations as provided in Article 5 of the Uniform Common Interest Ownership Act.

No similar provisions exist under the Condo Act or the PCA.

- **State Oversight Agency:** Create a new State-level agency or empower an existing one (Real Estate Commission) to register and oversee the activities of homeowner

associations. Entity may have enforcement powers as provided in Article 5 of the Uniform Common Interest Ownership Act, or Virginia's Common Interest Community Board, or may serve only an informational/advisory role as with Virginia's Office of the Common Interest Community Ombudsman.

No State agency in North Carolina currently has responsibility for oversight of homeowner associations.

Finding 6- Options for Committee Action - Foreclosure Issues.

Current law authorizes homeowner associations to use power of sale foreclosure to recover unpaid assessments and judicial foreclosure to recover unpaid fines and fees. The committee found that there may be a need to prohibit or limit the use of foreclosure in all or some cases.

Options Concerning Foreclosure Issues:

Currently, under both the Condominium Act (G.S. 47C-3-116) and the Planned Community Act (G.S. 47F-3-116), homeowner associations are authorized to file a claim of lien for any assessment that remains unpaid for a period of 30 days or more. Unless the declaration provides otherwise, fees, charges, late charges, and fines are enforceable as assessments.

If the debt securing the lien is based on fines, interest on fines or attorneys' fees resulting from fines, the association may only enforce the lien by use of judicial foreclosure. Associations may not seek to collect a service, collection, consulting, or administration fee unless the declaration expressly authorizes it and a lien secured by such a fee is also only enforceable by use of judicial foreclosure.

If the debt is for assessments for common expenses, the association may enforce the lien by use of the power of sale foreclosure statute. (Chapter 45, Art. 2A) Unlike judicial foreclosure, a power of sale foreclosure proceeding is held before the clerk of court and the clerk must sign a foreclosure order if there is evidence to prove only four factors: (1) a valid debt, (2) default in payment, (3) a legal right to foreclose, and (4) all owners have been served with notice of the hearing. No other issue may be considered in the proceeding. Once the clerk issues the order the property may be sold to satisfy the debt, in the same manner as a mortgage or deed of trust.

The following options to limit an association's authority to use foreclosure to enforce a lien have been recommended in the Uniform Common Interest Owners Bill of Rights Act:

1. The assessment must be at least 3 months past due and the unit owner has failed to accept or comply with a payment plan offered by the association.

Under current law, the assessment need only be 30 days past due and the law contains a specific provision that neither the association nor the homeowner is obligated to offer or accept any proposed installment plan, although the executive board may agree to allow it.

2. The executive board must vote to commence foreclosure against the specific unit.
Current law does not specify the process used by the association to commence foreclosure against a specific homeowner.

3. The association must apply any payments made by the homeowner first to unpaid assessments, then to late charges, then to attorneys' fees and other collection charges, and finally to unpaid fees, fines, interest, and late fees.

Current law does not specify how payments must be applied, however, it does require that the association notify the homeowner in writing and by first-class mail that the balance due must be paid within 15 days of the mailing or the homeowner will also be liable for attorneys' fees and court costs. Attorneys' fees in an uncontested case are limited to \$1,200, not including costs or expenses.

4. The association may not use foreclosure to enforce a lien resulting from unpaid fines and related sums, unless the association has obtained and perfected a judgment against the homeowner.

Current law provides that a lien resulting from fines and related sums can only be enforced by judicial foreclosure, which would result in a judgment. North Carolina law appears to conform to this limitation.

5. All aspects of the foreclosure must be commercially reasonable.

Chapter 45, the Foreclosure statute, specifies the method for advertising, time, date, place, and terms of foreclosure proceedings and the sale of property.

Finding 7 – Options for Committee Action - Solar Access Issues.

The Committee received complaints from homeowners and heard from staff with the State Energy Office that there is some confusion with regard to the law that invalidates new restrictive covenants as well as city and county ordinances which prohibit installation of solar collector devices. Specifically, concern was raised about an exception contained in the law that allows prohibitions on installation if the solar device would be visible from a roof slope or façade or if it faces a public access way. Reportedly, this exception has been used by HOAs to exclude solar devices altogether.

Options to address solar access issues (Finding 7), include:

- Remove the “visibility exception”
- Limit the “visibility exception,” as other states have done, by:
 - Limiting ability to require modifications to a solar energy system (for aesthetics) that exceed a certain cost; or
 - limiting required modifications (for aesthetics) that reduce the operating efficiency of the system.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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BILL DRAFT 2011-RI-1 [v.21] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

2/8/2011 3:30:24 PM

Short Title: Planned Community & Condo Act Amends. (Public)

Sponsors: Representatives McGee and Weiss (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANNED COMMUNITY ACT AND THE CONDOMINIUM ACT TO ADD OR ENHANCE CONSUMER PROTECTION PROVISIONS, INCLUDING PROVISIONS RELATED TO: DISCRETION IN ENFORCEMENT BY HOMEOWNERS ASSOCIATIONS, PROCESSES REQUIRED FOR IMPOSITION OF SPECIAL ASSESSMENTS, OPEN-MEETINGS, RECORD-KEEPING, USE OF ALTERNATIVE DISPUTE RESOLUTION, ADDITIONAL LIMITATIONS ON FORECLOSURE, DECLARANT CONTROL, AND DISCLOSURE OF INFORMATION ABOUT HOMEOWNERS ASSOCIATIONS TO POTENTIAL PURCHASERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"§ 47F-3-102.1 Enforcement determinations; factors.

(a) An executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, or rules and regulations of the association, including whether to compromise any claim for unpaid assessments or other claim made by or against it. An executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented one of the following factors exists:

- (1) The association's legal position does not justify taking any or further enforcement action.
- (2) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law.

1 (3) Although a violation may exist or may have occurred, it is not so
2 material as to be objectionable to a reasonable person or to justify
3 expending the association's resources.

4 (4) It is not in the association's best interests to pursue an enforcement
5 action.

6 (b) An executive board's determination not to pursue enforcement under one set
7 of circumstances does not prevent the executive board from taking enforcement action
8 under another set of circumstances, but the executive board may not be arbitrary or
9 capricious in taking enforcement action."

10 **SECTION 2.(a)** G.S. 47F-3-103(c) is repealed.

11 **SECTION 2.(b)** Article 3 of Chapter 47F of the General Statutes is amended
12 by adding a new section to read:

13 **"§ 47F-3-107.2. Adoption of budgets; special assessments.**

14 (a) The executive board, at least annually, shall adopt a proposed budget for the
15 planned community for consideration by the lot owners. Not later than 30 days after
16 adoption of a proposed budget, the executive board shall provide to all the lot owners a
17 summary of the budget, including any reserves, and a statement of the basis on which
18 any reserves are calculated and funded. Simultaneously, the board shall set a date not
19 less than 10 days or more than 60 days after providing the summary for a meeting of the
20 lot owners to consider ratification of the budget. Unless at that meeting a majority of all
21 lot owners or any larger number specified in the declaration reject the budget, the
22 budget is ratified, whether or not a quorum is present. If a proposed budget is rejected,
23 the budget last ratified by the lot owners continues until the lot owners ratify a
24 subsequent budget.

25 (b) The executive board, at any time, may propose a special assessment. Except
26 as otherwise provided in subsection (c), the assessment is effective only if the executive
27 board follows the procedures for ratification of a budget described in subsection (a) and
28 the lot owners do not reject the proposed assessment.

29 (c) If the executive board determines by a two-thirds vote that a special
30 assessment is necessary to respond to an emergency, the special assessment shall
31 become effective immediately in accordance with the terms of the vote. The executive
32 board may spend the funds paid on account of the emergency assessment only for the
33 purposes described in the vote. Notice of the emergency assessment must be provided
34 promptly to all lot owners. "

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

36 **"§ 47F-3-108. Meetings.**

37 (a) An association shall hold a meeting of lot owners annually at a time, date, and
38 place stated in or fixed in accordance with the bylaws. ~~A meeting of the association~~
39 ~~shall be held at least once each year.~~ Special meetings of the association may be called
40 by the president, a majority of the executive board, or by lot owners having ten percent
41 (10%), or any lower percentage specified in the bylaws, of the votes in the association.
42 Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other
43 officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by
44 United States mail to the mailing address of each lot or to any other mailing address
45 designated in writing by the lot owner, or sent by electronic means, including by
46 electronic mail over the Internet, to an electronic mailing address designated in writing

1 by the lot owner. If the association does not notify lot owners of a special meeting
2 within 30 days after the requisite number or percentage of lot owners request the
3 secretary to do so, the requesting members may directly notify all the lot owners of the
4 meeting. The notice of any meeting shall state the time and place of the meeting and the
5 items on the agenda, including the general nature of any proposed amendment to the
6 declaration or bylaws, any budget changes, and any proposal to remove a director or
7 officer. Only matters described in a meeting notice may be considered at a special
8 meeting.

9 ~~(b) Meetings of the executive board shall be held as provided in the bylaws. At~~
10 ~~regular intervals, the executive board meeting shall provide lot owners an opportunity to~~
11 ~~attend a portion of an executive board meeting and to speak to the executive board~~
12 ~~about their issues or concerns. The executive board may place reasonable restrictions on~~
13 ~~the number of persons who speak on each side of an issue and may place reasonable~~
14 ~~time restrictions on persons who speak.~~

15 (c) Except as otherwise provided in the bylaws, meetings of the association and
16 the executive board shall be conducted in accordance with the most recent edition of
17 Robert's Rules of Order Newly Revised. Unless the declaration or bylaws otherwise
18 provide, meetings of the association and the executive board may be conducted by
19 telephonic, video, or other conferencing process if both of the following conditions are
20 met:

21 (1) The meeting notice states the conferencing process to be used and
22 provides information explaining how lot owners may participate in the
23 conference directly or by meeting at a central location or conference
24 connection.

25 (2) The process provides all lot owners the opportunity to hear or perceive
26 the discussion and to comment as provided in subsection (d) of this
27 section.

28 (d) Lot owners must be given a reasonable opportunity at any meeting, including
29 meetings of the executive board, to comment regarding any matter affecting the planned
30 community or the association.

31 (e) Meetings of the executive board and committees of the association authorized
32 to act for the association must be open to the lot owners except during executive
33 sessions. The executive board and those committees may hold an executive session only
34 during a regular or special meeting of the board or a committee. No final vote or action
35 may be taken during an executive session. An executive session may be held only for
36 the following purposes:

37 (1) To consult with the association's attorney concerning legal matters.

38 (2) To discuss existing or potential litigation or mediation, arbitration, or
39 administrative proceedings.

40 (3) To discuss labor or personnel matters.

41 (4) To discuss contracts, leases, and other commercial transactions to
42 purchase or provide goods or services currently being negotiated,
43 including the review of bids or proposals, if premature general
44 knowledge of those matters would place the association at a
45 disadvantage; or

1 (5) To prevent public knowledge of the matter to be discussed if the
2 executive board or committee determines that public knowledge would
3 violate the privacy of any person.

4 (f) For purposes of this section, a gathering of board members at which the board
5 members do not conduct association business is not a meeting of the executive board.
6 The executive board and its members may not use incidental or social gatherings of
7 board members or any other method to evade the open meeting requirements of this
8 section.

9 (g) During the period of declarant control, the executive board shall meet at least
10 four times a year. At least one of those meetings must be held at the planned community
11 or at a place convenient to the community. After termination of the period of declarant
12 control, all executive board meetings must be at the planned community or at a place
13 convenient to the community unless the lot owners amend the bylaws to vary the
14 location of those meetings.

15 (h) Unless the meeting is included in a schedule given to the lot owners or the
16 meeting is called to deal with an emergency, the secretary or other officer specified in
17 the bylaws shall give notice of each executive board meeting to each board member and
18 to the lot owners. The notice must be given not less than 10 days nor more than 60 days
19 before the meeting and must state the time, date, place, and agenda of the meeting.

20 (i) If any materials are distributed to the executive board before the meeting, the
21 executive board at the same time shall make copies of those materials reasonably
22 available to lot owners, except that the board need not make available copies of
23 unapproved minutes or materials that are to be considered in executive session.

24 (j) Unless the declaration or bylaws otherwise provide, the executive board may
25 meet by telephonic, video, or other conferencing process if both of the following
26 conditions are met:

27 (1) The meeting notice states the conferencing process to be used and
28 provides information explaining how lot owners may participate in the
29 conference directly or by meeting at a central location or conference
30 connection.

31 (2) The process provides all lot owners the opportunity to hear or perceive
32 the discussion and to comment as provided in subsection (d).

33 (k) After termination of any period when the declarant controls the association,
34 lot owners may amend the bylaws to vary the procedures for meetings described in
35 subsection (j).

36 (l) Instead of meeting, the executive board may act by unanimous consent as
37 documented in a record authenticated by all its members. The secretary promptly shall
38 give notice to all lot owners of any action taken by unanimous consent. After
39 termination of the period of declarant control, the executive board may act by
40 unanimous consent only to undertake ministerial actions or to implement actions
41 previously taken at a meeting of the executive board.

42 (m) Even if an action by the executive board is not in compliance with this
43 section, it is valid unless set aside by a court. A challenge to the validity of an action of
44 the executive board for failure to comply with this section may not be brought more
45 than 60 days after the minutes of the executive board of the meeting at which the action

1 was taken are approved or the record of that action is distributed to lot owners,
2 whichever is later."

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

4 "**§ 47F-3-116. Lien for assessments.**

5 (a) Any assessment levied against a lot remaining unpaid for a period of ~~30~~ 90 days or
6 longer shall constitute a lien on that lot when a claim of lien is filed of record in the
7 office of the clerk of superior court of the county in which the lot is located in the
8 manner provided herein. Prior to filing a claim of lien, the association must make
9 reasonable and diligent efforts to ensure that its records contain the lot owner's current
10 mailing address. No fewer than 15 days prior to filing the lien, the association shall mail
11 a statement of the assessment amount due and an offer to accept payments in
12 installments as provided by subsection (e2) of this section by first-class mail to the
13 physical address of the lot and the lot owner's address of record with the association,
14 and, if different, to the address for the lot owner shown on the county tax records and
15 the county real property records for the lot. If the lot owner is a corporation, the
16 statement shall also be sent by first-class mail to the mailing address of the registered
17 agent for the corporation. Unless the declaration otherwise provides, fees, charges, late
18 charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107,
19 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except
20 as provided in subsections (a1) and (a2) of this section, the ~~association~~ association,
21 acting through the executive board, may foreclose the claim of lien in like manner as a
22 mortgage on real estate ~~under power of sale~~ under Article 2A of Chapter 45 of the
23 General Statutes. Statutes, if the assessment remains unpaid for 90 days or more and the
24 lot owner has failed to accept or comply with the proposed installment plan. The
25 association shall not foreclose the claim of lien unless the executive board votes to
26 commence the proceeding against the specific lot.

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

33 (a2) An association shall not levy, charge, or attempt to collect a service,
34 collection, consulting, or administration fee from any lot owner unless the fee is
35 expressly allowed in the declaration. Any lien securing a debt consisting solely of these
36 fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter
37 1 of the General Statutes.

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

44 (b1) An association shall apply any payments made by the lot owner in the
45 following priority:

46 (1) Unpaid assessments.

1 (2) Late charges associated with the assessment.

2 (3) Attorneys' fees and other collection charges.

3 (4) Fees, fines, interest, and associated late fees.

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

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

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

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

36 (e2) ~~The association, acting through its executive board and in the board's sole~~
37 ~~discretion, may agree to~~ association shall allow payment of an outstanding balance in
38 ~~installments.~~ accordance with an installment plan. An installment plan under this
39 subsection shall consist of equal periodic payments made over a reasonable time based
40 on the amount of the outstanding balance. The accumulation of late charges associated
41 with the outstanding balance shall cease when the lot owner agrees to make payments in
42 accordance with an installment plan. Neither the association nor the lot owner is
43 ~~obligated to offer or accept any proposed installment schedule.~~ The association shall
44 mail a statement of the assessment amount due and an offer to accept payments under a
45 proposed installment plan in accordance with subsection (a) of this section. If the lot
46 owner accepts the proposed installment plan and subsequently fails to comply with the
47 terms of the plan, the association may file a claim of lien in accordance with subsection

1 (a) of this section when a scheduled payment remains unpaid for 30 days or longer.
2 Reasonable administrative fees and costs for accepting and processing installments may
3 be added to the outstanding balance and included in an installment payment schedule.
4 Reasonable attorneys' fees may be added to the outstanding balance and included in an
5 installment schedule only after the lot owner has been given notice as required in
6 subsection (e1) of this section.

7 (f) Where the holder of a first mortgage or first deed of trust of record, or other
8 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or
9 first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be
10 liable for the assessments against such lot which became due prior to the acquisition of
11 title to such lot by such purchaser. Such unpaid assessments shall be deemed to be
12 common expenses collectible from all the lot owners including such purchaser, its heirs,
13 successors, and assigns.

14 (g) A claim of lien shall set forth the name and address of the association, the
15 name of the record owner of the lot at the time the claim of lien is filed, a description of
16 the lot, and the amount of the lien claimed. The first page of the claim of lien shall
17 contain the following statement in print that is in boldface, capital letters and no smaller
18 than the largest print used elsewhere in the document: "THIS DOCUMENT
19 CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT
20 PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH
21 FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A
22 MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of
23 lien on behalf of the association shall attach to and file with the claim of lien a
24 certificate of service attesting to the attempt of service on the record owner, which
25 service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy
26 of a summons and a complaint. If the actual service is not achieved, the person signing
27 the claim of lien on behalf of the association shall be deemed to have met the
28 requirements of this subsection if service has been attempted pursuant to both of the
29 following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien
30 by regular, first-class mail, postage prepaid to the physical address of the lot and the lot
31 owner's address of record with the association, and, if different, to the address for the lot
32 owner shown on the county tax records and the county real property records for the lot.
33 In the event that the owner of record is not a natural person, and actual service is not
34 achieved, the person signing the claim of lien on behalf of the association shall be
35 deemed to have met the requirements of this subsection if service has been attempted
36 once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through
37 G.S. 1A-1, Rule 4(j)(9)."

38 **SECTION 5.(a)** G.S. 47F-3-118 reads as rewritten:

39 **"§ 47F-3-118. Association records.**

40 ~~(a)The association shall keep financial records sufficiently detailed to enable the~~
41 ~~association to comply with this Chapter. All financial and other records, including records of~~
42 ~~meetings of the association and executive board, shall be made reasonably available for~~
43 ~~examination by any lot owner and the lot owner's authorized agents as required in the bylaws~~
44 ~~and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be~~
45 ~~maintained, the association shall keep accurate records of all cash receipts and expenditures and~~
46 ~~all assets and liabilities.~~ The association must retain the following:

- 1 (1) Detailed records of receipts and expenditures affecting the operation
2 and administration of the association and other appropriate accounting
3 records.
- 4 (2) Minutes of all meetings of its lot owners and executive board including
5 executive sessions, a record of all actions taken by the lot owners or
6 executive board without a meeting, and a record of all actions taken by
7 a committee in place of the executive board on behalf of the
8 association.
- 9 (3) The names of lot owners in a form that permits preparation of a list of
10 the names of all lot owners and the addresses at which the association
11 communicates with them, in alphabetical order showing the number of
12 votes each owner is entitled to cast.
- 13 (4) Its original or amended organizational documents, bylaws and all
14 amendments to them, and all rules currently in effect.
- 15 (5) All financial statements and tax returns of the association for the past
16 three years.
- 17 (6) A list of the names and addresses of its current executive board
18 members and officers.
- 19 (7) Its most recent annual income and expense statement and balance
20 sheet as required by subsection (a1) of this section.
- 21 (8) Financial and other records sufficiently detailed to enable the
22 association to comply with other requirements of law.
- 23 (9) Copies of current contracts to which it is a party.
- 24 (10) Records of executive board or committee actions to approve or deny
25 any requests for design or architectural approval from lot owners.
- 26 (11) Ballots, proxies, and other records related to voting by lot owners for
27 one year after the election, action, or vote to which they relate.

28 (a1) In addition to any specific information that is required by the bylaws to be
29 assembled and reported to the lot owners at specified times, the association shall make an
30 annual income and expense statement and balance sheet available to all lot owners at no charge
31 and within 75 days after the close of the fiscal year to which the information relates.
32 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's
33 books and records for the current or immediately preceding fiscal year may be required by a
34 vote of the majority of the executive board or by the affirmative vote of a majority of the lot
35 owners present and voting in person or by proxy at any annual meeting or any special meeting
36 duly called for that purpose.

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

41 ~~(c) In addition to the limitations of Article 8 of Chapter 55A of the General~~
42 ~~Statutes, no financial payments, including payments made in the form of goods and~~
43 ~~services, may be made to any officer or member of the association's executive board or~~
44 ~~to a business, business associate, or relative of an officer or member of the executive~~
45 ~~board, except as expressly provided for in the bylaws or in payments for services or~~
46 ~~expenses paid on behalf of the association which are approved in advance by the~~
47 ~~executive board.~~

1 (d) Subject to subsections (e) and (f) of this section, all records retained by an
2 association must be available for examination and copying by a lot owner or the owner's
3 authorized agent as follows:

4 (1) During reasonable business hours or at a mutually convenient time and
5 location.

6 (2) Upon 15 days' notice in a request reasonably identifying the specific
7 records of the association requested.

8 (e) Records retained by an association may be withheld from inspection and copying
9 to the extent that they concern one of the following matters:

10 (1) Personnel, salary, and medical records relating to specific individuals.

11 (2) Contracts, leases, and other commercial transactions to purchase or
12 provide goods or services currently being negotiated.

13 (3) Existing or potential litigation or mediation, arbitration, or
14 administrative proceedings.

15 (4) Existing or potential matters involving federal, state, or local
16 administrative or other formal proceedings before a governmental
17 tribunal for enforcement of the declaration, bylaws, or rules and
18 regulations.

19 (5) Communications with the association's attorney which are otherwise
20 protected by the attorney-client privilege or the attorney work- product
21 doctrine.

22 (6) Information the disclosure of which would violate law other than this
23 Act.

24 (7) Records of an executive session of the executive board.

25 (8) Individual lot files other than those of the requesting owner.

26 (f) An association may charge a reasonable fee for providing copies of any
27 records under this section and for supervising the lot owner's inspection.

28 (g) A right to copy records under this section includes the right to receive copies
29 by photocopying or other means, including copies through an electronic transmission if
30 available upon request by the lot owner.

31 (h) An association is not obligated to compile or synthesize information.

32 (i) Information provided pursuant to this section may not be used for commercial
33 purposes."

34 **SECTION 5.(b)** G.S. 47F-3-103 is amended by adding a new subsection to
35 read:

36 "(g) In addition to the limitations of Article 8 of Chapter 55A of the General
37 Statutes, no financial payments, including payments made in the form of goods and
38 services, may be made to any officer or member of the association's executive board or
39 to a business, business associate, or relative of an officer or member of the executive
40 board, except as expressly provided for in the bylaws or in payments for services or
41 expenses paid on behalf of the association which are approved in advance by the
42 executive board."

43 **SECTION 6.** Article 3 of Chapter 47F of the General Statutes is amended by
44 adding a new section to read:

45 **"§ 47F-3-120.1 Alternative dispute resolution allowed.**

1 Parties to a dispute arising under this Chapter, an association's declaration, bylaws,
2 or rules and regulations, may agree to resolve the dispute by any form of binding or
3 nonbinding alternative dispute resolution, except that a declarant may agree with the
4 association to do so only after the period of declarant control has expired. Parties
5 electing to use alternative dispute resolution for disputes arising under this Chapter shall
6 only use mediators certified by the Dispute Resolution Commission. An agreement to
7 submit to any form of binding alternative dispute resolution must be in a record
8 authenticated by the parties."

9 **SECTION 7.** G.S. 47F-1-103 is amended by adding two new subdivisions to
10 read:

11 **"§ 47F-1-103. Definitions.**

12 In the declaration and bylaws, unless specifically provided otherwise or the context
13 otherwise requires, and in this Chapter:

14 (1) ~~Reserved.~~ "Affiliate of a declarant" means any person who controls, is
15 controlled by, or is under common control with a declarant. A person
16 "controls" a declarant if the person (i) is a general partner, officer,
17 director, or employer of the declarant, (ii) directly or indirectly or
18 acting in concert with one or more other persons, or through one or
19 more subsidiaries, owns, controls, holds with power to vote, or holds
20 proxies representing, more than twenty percent (20%) of the voting
21 interests in the declarant, (iii) controls in any manner the election of a
22 majority of the directors of the declarant, or (iv) has contributed more
23 than twenty percent (20%) of the capital of the declarant. A person "is
24 controlled by" a declarant if the declarant (i) is a general partner,
25 officer, director, or employer of the person, (ii) directly or indirectly or
26 acting in concert with one or more other persons, or through one or
27 more subsidiaries, owns, controls, holds with power to vote, or holds
28 proxies representing, more than twenty percent (20%) of the voting
29 interests in the person, (iii) controls in any manner the election of a
30 majority of the directors of the person, or (iv) has contributed more
31 than twenty percent (20%) of the capital of the person. Control does
32 not exist if the powers described in this paragraph are held solely as
33 security for an obligation and are not exercised.

34 ...

35 (14) "Dispose" or "disposition" means a voluntary transfer to a purchaser of
36 any legal or equitable interest in a lot, but the term does not include the
37 transfer or release of a security interest."

38 **SECTION 8.(a)** G.S. 47F-3-103(d) reads as rewritten:

39 **"§ 47F-3-103. Executive board members and officers.**

40 ...

41
42 (d) ~~The~~ Subject to subsection (d1), the declaration may provide for a period of
43 declarant control of the association, during which period a declarant, or persons
44 designated by the declarant, may appoint and remove the officers and members of the
45 executive board. Regardless of the period provided in the declaration, a period of
46 declarant control terminates no later than the earlier of: (i) 120 days after conveyance of

1 seventy-five percent (75%) of the lots (including lots which may be created pursuant to
2 special declarant rights) to lot owners other than a declarant; (ii) two years after all
3 declarants have ceased to offer lots for sale in the ordinary course of business; or (iii)
4 two years after any development right to add new lots was last exercised. A declarant
5 may voluntarily surrender the right to appoint and remove officers and members of the
6 executive board before termination of that period, but in that event the declarant may
7 require, for the duration of the period of declarant control, that specified actions of the
8 association or executive board, as described in a recorded instrument executed by the
9 declarant, be approved by the declarant before they become effective."

10 **SECTION 8.(b)** G.S. 47F-3-103 is amended by adding a new subsection to
11 read:

12 "(d1) Not later than 60 days after conveyance of twenty-five percent (25%) of the
13 lots (including lots which may be created pursuant to special rights) to lot owners other
14 than a declarant, at least one member and not less than twenty-five percent (25%) of the
15 members of the executive board shall be elected by lot owners other than a declarant.
16 Not later than 60 days after conveyance of fifty percent (50%) of the lots (including lots
17 which may be created pursuant to special declarant rights) to lot owners other than a
18 declarant, not less than thirty-three percent (33%) of the members of the executive
19 board shall be elected by lot owners other than the declarant."

20 **SECTION 8.(c)** G.S. 47F-3-104 reads as rewritten:

21 **"§ 47F-3-104. Transfer of special declarant rights.**

22 ~~Except for transfer of declarant rights pursuant to foreclosure, no~~(a) No special
23 declarant right (G.S. 47F-1-103(28)) may be transferred except by an instrument
24 evidencing the transfer recorded in every county in which any portion of the planned
25 community is located. The instrument is not effective unless executed by the transferee.

26 (b) Upon transfer of any special declarant right, the liability of a transferor
27 declarant is as follows:

28 (1) A transferor is not relieved of any obligation or liability arising before the
29 transfer, including, but not limited to, liability or obligations relating to
30 warranties. Lack of privity does not deprive any lot owner of standing to
31 bring an action to enforce any obligation of the transferor.

32 (2) If the successor to any special declarant right is an affiliate of a declarant
33 (G.S. 47F-1-103), the transferor is jointly and severally liable with the
34 successor for any obligation or liability of the successor which relates to the
35 planned community.

36 (3) If a transferor retains any special declarant right, but transfers other special
37 declarant rights to a successor who is not an affiliate of the declarant, the
38 transferor is liable for any obligations or liabilities imposed on a declarant by
39 this chapter or by the declaration relating to the retained special declarant
40 rights and arising after the transfer.

41 (4) A transferor has no liability for any act or omission or any breach of a
42 contractual or warranty obligation arising from the exercise of a special
43 declarant right by a successor declarant who is not an affiliate of the
44 transferor.

45 (c) Unless otherwise provided in a mortgage instrument or deed of trust, in case
46 of foreclosure or a mortgage, tax sale, judicial sale, sale by a trustee under a deed of
47 trust, or sale under Bankruptcy Code or receivership proceedings, of any lots owned by
48 a declarant, or real estate in a lot subject to development rights, a person acquiring title

1 to all the real estate being foreclosed or sold, but only upon the person's request,
2 succeeds to all special declarant rights related to that real estate held by that declarant,
3 or only to any rights reserved in the declaration and held by that declarant to maintain
4 models, sales offices and signs. The judgment or instrument conveying title shall
5 provide for transfer of only the special declarant rights requested.

6 (d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of
7 trust, or sale under Bankruptcy Code or receivership proceeding, of all lots and other
8 real estate in the planned community owned by a declarant the declarant ceases to have
9 any special declarant rights.

10 (e) The liabilities and obligations of persons who succeed to special declarant
11 rights are as follows:

12 (1) A successor to any special declarant right who is an affiliate of a
13 declarant is subject to all obligations and liabilities imposed on the
14 transferor related to the planned community.

15 (2) A successor to any special declarant right, other than a successor
16 described in paragraph (3) who is not an affiliate of a declarant, is
17 subject to all obligations and liabilities:

18 a. On a declarant which relate to the declarant's exercise or
19 nonexercise of special declarant right; or

20 b. On the declarant's transferor, other than:

21 (i) Misrepresentation by any prior declarant;

22 (ii) Warranty obligations on improvements made by any previous
23 declarant, or made before the planned community was
24 created;

25 (iii) Breach of any fiduciary obligation by any previous declarant
26 or the declarant's appointees to the executive board; or

27 (iv) Any liability or obligation imposed on the transferor as a
28 result of the transferor's acts or omissions after the transfer.

29 (3) A successor to all special declarant rights held by the successor's
30 transferor who is not an affiliate of that declarant and who succeeded
31 to those rights pursuant to a deed in lieu of foreclosure or a judgment
32 or instrument conveying title to lots under subsection (c), may declare
33 his or her intention in a recorded instrument to hold those rights solely
34 for transfer to another person. Thereafter, until transferring all special
35 declarant rights to any person acquiring title to any lot owned by the
36 successor, or until recording an instrument permitting exercise of all
37 those rights other than the right held by the transferor to control the
38 executive board in accordance with the provisions of G.S. 47F-3-
39 103(d) for the duration of any period of declarant control, and any
40 attempted exercise of those rights is void. So long as a successor
41 declarant may not exercise special declarant rights under this
42 subsection, the successor declarant is not subject to any liability or
43 obligation as a declarant other than liability for his or her acts and
44 omissions under G.S. 47F-3-103(d)."

45 **SECTION 8.(d) G.S. 47F-3-105 reads as rewritten:**

46 **"§ 47F-3-105. Termination of contracts and leases of declarant.**

1 If entered into before the executive board elected by the lot owners pursuant to
2 G.S. 47F-3-103(e) takes office, ~~any contract or lease affecting or related to the planned~~
3 ~~community~~(1) any management contract, employment contract, or lease of recreational
4 or parking areas or facilities, (2) any other contract or leases between the association
5 and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona
6 fide or was unconscionable to the lot owners at the time entered into under the
7 circumstances then prevailing, may be terminated without penalty by the association at
8 any time after the executive board elected by the lot owners pursuant to
9 G.S. 47F-3-103(e) takes office upon not less than 90 days' notice to the other party.
10 Notice of the substance of the provisions of this section shall be set out in each contract
11 entered into by or on behalf of the association before the executive board elected by the
12 lot owners takes office. Failure of the contract to contain such a provision shall not
13 affect the rights of the association under this section."

14 **SECTION 8.(e)** G.S. 47F-3-111 reads as rewritten:

15 **"§ 47F-3-111. Tort and contract liability.**

16 (a) Neither the association nor any lot owner except the declarant is liable for
17 that declarant's torts in connection with any part of the planned community which that
18 declarant has the responsibility to maintain.

19 (b) An action alleging a wrong done by the association shall be brought against
20 the association and not against a lot owner.

21 (c) If an action is brought against the association for a wrong which occurred
22 during any period of declarant control, and if the association gives the declarant who
23 then controlled the association reasonable notice of and an opportunity to defend against
24 the action, such declarant is liable to the association:

25 (1) for all tort losses not covered by insurance carried by the association
26 suffered by the association or that lot owner, and

27 (2) for all losses which the association would not have incurred but for a
28 breach of contract. Nothing in this subsection shall be construed to
29 impose strict or absolute liability upon the declarant for wrongs or
30 actions which occurred during the period of declarant control.

31 (e)(d) In any case where the declarant is liable to the association under this section,
32 the declarant is also liable for all litigation expenses, including reasonable attorneys'
33 fees, incurred by the association. Any statute of limitation affecting the association's
34 right of action under this section is tolled until the period of declarant control
35 terminates. A lot owner is not precluded from bringing an action contemplated by this
36 section because the person is a lot owner or a member of the association."

37 **SECTION 9.(a)** G.S. 47F-3-102(13) reads as rewritten:

38 **"§ 47F-3-102. Powers of owners' association.**

39 Unless the articles of incorporation or the declaration expressly provides to the
40 contrary, the association may:

41 ...

42 (13) Impose reasonable charges in connection with the preparation and
43 recordation of documents, including, without limitation, amendments
44 to the declaration, certificates required by G.S. 47F-4-103(b), or
45 statements of unpaid assessments;"

1 SECTION 9.(b) Chapter 47F of the General Statutes is amended to add a
2 new Article to read:

3 "ARTICLE 4

4 "Disclosures to Purchasers.

5 "G.S. 47F-4-101. Applicability, waiver.

6 (a) This Article applies to the disposition of all lots that are part of a planned
7 community subject to this Chapter, except as provided in subsection (b) or as modified or
8 waived by agreement of purchasers of lots in a planned community in which all lots are
9 restricted to non-residential use.

10 (b) No disclosure certificate as provided for in G.S. 47F-4-103 need be prepared or
11 delivered in the case of a disposition which is:

12 (1) Gratuitous.

13 (2) Pursuant to court order.

14 (3) By a government or governmental agency.

15 (4) By foreclosure or deed in lieu of foreclosure.

16 (5) To a dealer.

17 (6) Subject to cancellation at any time and for any reason by the purchaser
18 without penalty.

19 (7) Of property restricted to nonresidential purposes.

20 "§ G.S. 47F-4-102. Purchaser's Right to Cancel.

21 (a) A person required to deliver a disclosure certificate pursuant to
22 G.S. 47F-4-103(a) shall provide a purchaser with a copy of the certificate before
23 conveyance of the lot, and not later than the date of any contract of sale. Unless a
24 purchaser is given the disclosure certificate more than 5 days before execution of a
25 contract for the purchase of the lot, the purchase contract is voidable by the purchaser
26 until the certificate has been provided and for five days thereafter or until conveyance,
27 whichever first occurs.

28 (b) A purchaser who elects to cancel a contract pursuant to subsection (a) may do
29 so by hand delivering notice thereof to the seller or by mailing notice thereof by prepaid
30 United States mail to the seller or to the seller's 'agent for service of process.
31 Cancellation is without penalty, and all payments made by the purchaser before
32 cancellation must be refunded promptly.

33 "§ G.S. 47F-4-103. Disclosures to be made to purchasers.

34 (a) Unless exempt under G.S. 47F-4-101(b), a seller of lot that is part of a
35 planned community shall furnish to a purchaser before the earlier of conveyance or
36 transfer of the right to possession of the lot, a copy of the declaration, other than any
37 plats and plans, the bylaws, the rules or regulations of the association, and a certificate
38 containing all of the following:

39 (1) A statement disclosing the effect on the proposed disposition of any
40 right of first refusal or other restraint on the free alienability of the lot
41 held by the association;

42 (2) A statement setting forth the amount of the periodic common expense
43 assessment and any unpaid common expense or special assessment
44 currently due and payable from the owner who is selling the lot;

45 (3) A statement of any other fees payable by the owner who is selling the
46 lot;

- 1 (4) A statement of any capital expenditures approved by the association
2 for the current and succeeding fiscal years;
- 3 (5) A statement of the amount of any reserves for capital expenditures and
4 of any portions of those reserves designated by the association for any
5 specified projects;
- 6 (6) The most recent regularly prepared balance sheet and income and
7 expense statement, if any, of the association;
- 8 (7) The current operating budget of the association;
- 9 (8) A statement of any unsatisfied judgments against the association and
10 the status of any pending suits in which the association is a defendant;
- 11 (9) A statement describing any insurance coverage provided for the
12 benefit of lot owners;
- 13 (10) A statement as to whether the executive board has given or received
14 written notice that any existing uses, occupancies, alterations, or
15 improvements in or to the lot or to the limited common elements
16 assigned thereto violate any provision of the declaration;
- 17 (11) A statement as to whether the executive board has received written
18 notice from a governmental agency of any violation of environmental,
19 health, or building codes with respect to the lot, the limited common
20 elements assigned thereto, or any other portion of the planned
21 community which has not been cured;
- 22 (12) A statement of the remaining term of any leasehold estate affecting the
23 planned community and the provisions governing any extension or
24 renewal thereof;
- 25 (13) A statement of any restrictions in the declaration affecting the amount
26 that may be received by a lot owner upon sale, condemnation, casualty
27 loss to the lot or the planned community, or termination of the planned
28 community;
- 29 (14) In a cooperative, an accountant's statement, if any was prepared, as to
30 the deductibility for federal income tax purposes by the lot owner of
31 real estate taxes and interest paid by the association;
- 32 (15) A statement describing any pending sale or encumbrance of common
33 elements; and
- 34 (16) A statement disclosing the effect on the lot to be conveyed of any
35 restrictions on the owner's right to use or occupy the lot or to lease the
36 lot to another person.

37 (b) The association, within 10 days after a request by a lot owner, shall furnish a
38 certificate containing the information and copies of all documents necessary to enable
39 the lot owner to comply with this section. A lot owner providing a certificate pursuant to
40 subsection (a) is not liable to the purchaser for any erroneous information provided by
41 the association and included in the certificate.

42 (c) A purchaser is not liable for any unpaid assessment or fee greater than the
43 amount set forth in the certificate. A lot owner is not liable to a purchaser for the failure
44 or delay of the association to provide the certificate in a timely manner."

45 **SECTION 9.(c)** The North Carolina Real Estate Commission shall revise
46 the Residential Property Disclosure Statement developed by it pursuant to G.S. 47E-4 to

1 provide a place for disclosure by sellers of the existence of any homeowners association
2 with responsibility for enforcing rules and regulations relating to the real property and
3 the existence of any restrictive covenants affecting the real property, regardless of
4 whether such restrictive covenants are currently violated by any condition of the real
5 property.

6 **SECTION 10.** This part is effective when it becomes law, and applies to all:
7 (1) planned communities created in this State on or after that date, which contain more
8 than 20 residential lots; and (2) planned communities created in this State before that
9 date, which contain more than 20 residential lots, except that the act applies only with
10 respect to events and circumstances occurring on after that date and does not invalidate
11 existing provisions of the declaration, bylaws, or plats or plans of those planned
12 communities. The declaration, bylaws, or plats and plans of any planned community
13 created before the effective date of this act may be amended to achieve any result
14 permitted by this act, regardless of what applicable law provided before that date.

15
16 **PART II. AMENDMENTS TO CONDOMINIUM ACT**

17
18 **SECTION 11.** Article 3 of Chapter 47C of the General Statutes is amended
19 by adding a new section to read:

20 **"§ 47C-3-102.1 Enforcement determinations; factors.**

21 (a) An executive board may determine whether to take enforcement action by
22 exercising the association's power to impose sanctions or commencing an action for a
23 violation of the declaration, bylaws, or rules and regulations of the association,
24 including whether to compromise any claim for unpaid assessments or other claim made
25 by or against it. An executive board does not have a duty to take enforcement action if it
26 determines that, under the facts and circumstances presented one of the following
27 factors exists:

- 28 (1) The association's legal position does not justify taking any or further
29 enforcement action.
30 (2) The covenant, restriction, or rule being enforced is, or is likely to be
31 construed as, inconsistent with law.
32 (3) Although a violation may exist or may have occurred, it is not so
33 material as to be objectionable to a reasonable person or to justify
34 expending the association's resources.
35 (4) It is not in the association's best interests to pursue an enforcement
36 action.

37 (b) An executive board's determination not to pursue enforcement under one set
38 of circumstances does not prevent the executive board from taking enforcement action
39 under another set of circumstances, but the executive board may not be arbitrary or
40 capricious in taking enforcement action."

41 **SECTION 12.(a)** G.S. 47C-3-103(c) is repealed.

42 **SECTION 12.(b)** Article 3 of Chapter 47C of the General Statutes is
43 amended by adding a new section to read:

44 **"§ 47C-3-107.2. Adoption of budgets; special assessments.**

45 (a) The executive board, at least annually, shall adopt a proposed budget for the
46 condominium for consideration by the unit owners. Not later than 30 days after adoption

1 of a proposed budget, the executive board shall provide to all the unit owners a
2 summary of the budget, including any reserves, and a statement of the basis on which
3 any reserves are calculated and funded. Simultaneously, the board shall set a date not
4 less than 10 days or more than 60 days after providing the summary for a meeting of the
5 unit owners to consider ratification of the budget. Unless at that meeting a majority of
6 all unit owners or any larger number specified in the declaration reject the budget, the
7 budget is ratified, whether or not a quorum is present. If a proposed budget is rejected,
8 the budget last ratified by the unit owners continues until the unit owners ratify a
9 subsequent budget.

10 (b) The executive board, at any time, may propose a special assessment. Except
11 as otherwise provided in subsection (c), the assessment is effective only if the executive
12 board follows the procedures for ratification of a budget described in subsection (a) and
13 the unit owners do not reject the proposed assessment.

14 (c) If the executive board determines by a two-thirds vote that a special
15 assessment is necessary to respond to an emergency, the special assessment shall
16 become effective immediately in accordance with the terms of the vote. The executive
17 board may spend the funds paid on account of the emergency assessment only for the
18 purposes described in the vote. Notice of the emergency assessment must be provided
19 promptly to all unit owners. "

20 **SECTION 13.** G.S. 47C-3-108 reads as rewritten:

21 **"§ 47C-3-108. Meetings.**

22 (a) An association shall hold a meeting of unit owners annually at a time, date,
23 and place stated in or fixed in accordance with the bylaws. ~~A meeting of the association~~
24 ~~shall be held at least once each year.~~ Special meetings of the association may be called
25 by the president, a majority of the executive board, or by unit owners having twenty
26 percent (20%) or any lower percentage specified in the bylaws of the votes in the
27 association. Not less than 10 nor more than 50 days in advance of any meeting, the
28 secretary or other officer specified in the bylaws shall cause notice to be hand-delivered
29 or sent prepaid by United States mail to the mailing address of each unit or to any other
30 mailing address designated in writing by the unit owner, or sent by electronic means,
31 including by electronic mail over the Internet, to an electronic mailing address
32 designated in writing by the unit owner. If the association does not notify unit owners of
33 a special meeting within 30 days after the requisite number or percentage of unit owners
34 request the secretary to do so, the requesting members may directly notify all the unit
35 owners of the meeting. The notice of any meeting must state the time and place of the
36 meeting and the items on the agenda, including the general nature of any proposed
37 amendment to the declaration or bylaws, any budget changes, and any proposal to
38 remove a director or officer. Only matters described in a meeting notice may be
39 considered at a special meeting.

40 (b) ~~Meetings of the executive board shall be held as provided in the bylaws. At~~
41 ~~regular intervals, the executive board meeting shall provide unit owners an opportunity~~
42 ~~to attend a portion of an executive board meeting and to speak to the executive board~~
43 ~~about their issues and concerns. The executive board may place reasonable restrictions~~
44 ~~on the number of persons who speak on each side of an issue and may place reasonable~~
45 ~~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 Newly Revised. Unless the declaration or bylaws otherwise
4 provide, meetings of the association and the executive board may be conducted by
5 telephonic, video, or other conferencing process if both of the following conditions are
6 met:

7 (1) The meeting notice states the conferencing process to be used and
8 provides information explaining how unit owners may participate in
9 the conference directly or by meeting at a central location or
10 conference connection.

11 (2) The process provides all unit owners the opportunity to hear or
12 perceive the discussion and to comment as provided in subsection (d)
13 of this section.

14 (d) Unit owners must be given a reasonable opportunity at any meeting,
15 including meetings of the executive board, to comment regarding any matter affecting
16 the condominium or the association.

17 (e) Meetings of the executive board and committees of the association authorized
18 to act for the association must be open to the unit owners except during executive
19 sessions. The executive board and those committees may hold an executive session only
20 during a regular or special meeting of the board or a committee. No final vote or action
21 may be taken during an executive session. An executive session may be held only for
22 the following purposes:

23 (1) To consult with the association's attorney concerning legal matters.

24 (2) To discuss existing or potential litigation or mediation, arbitration, or
25 administrative proceedings.

26 (3) To discuss labor or personnel matters.

27 (4) To discuss contracts, leases, and other commercial transactions to
28 purchase or provide goods or services currently being negotiated,
29 including the review of bids or proposals, if premature general
30 knowledge of those matters would place the association at a
31 disadvantage; or

32 (5) To prevent public knowledge of the matter to be discussed if the
33 executive board or committee determines that public knowledge would
34 violate the privacy of any person.

35 (f) For purposes of this section, a gathering of board members at which the board
36 members do not conduct association business is not a meeting of the executive board.
37 The executive board and its members may not use incidental or social gatherings of
38 board members or any other method to evade the open meeting requirements of this
39 section.

40 (g) During the period of declarant control, the executive board shall meet at least
41 four times a year. At least one of those meetings must be held at the condominium or at
42 a place convenient to the condominium. After termination of the period of declarant
43 control, all executive board meetings must be at the condominium or at a place
44 convenient to the condominium unless the unit owners amend the bylaws to vary the
45 location of those meetings.

1 (h) Unless the meeting is included in a schedule given to the unit owners or the
2 meeting is called to deal with an emergency, the secretary or other officer specified in
3 the bylaws shall give notice of each executive board meeting to each board member and
4 to the unit owners. The notice must be given not less than 10 days nor more than 60
5 days before the meeting and must state the time, date, place, and agenda of the meeting.

6 (i) If any materials are distributed to the executive board before the meeting, the
7 executive board at the same time shall make copies of those materials reasonably
8 available to unit owners, except that the board need not make available copies of
9 unapproved minutes or materials that are to be considered in executive session.

10 (j) Unless the declaration or bylaws otherwise provide, the executive board may
11 meet by telephonic, video, or other conferencing process if both of the following
12 conditions are met:

13 (1) The meeting notice states the conferencing process to be used and
14 provides information explaining how unit owners may participate in
15 the conference directly or by meeting at a central location or
16 conference connection.

17 (2) The process provides all unit owners the opportunity to hear or
18 perceive the discussion and to comment as provided in subsection (d).

19 (k) After termination of any period when the declarant controls the association,
20 unit owners may amend the bylaws to vary the procedures for meetings described in
21 subsection (j).

22 (l) Instead of meeting, the executive board may act by unanimous consent as
23 documented in a record authenticated by all its members. The secretary promptly shall
24 give notice to all unit owners of any action taken by unanimous consent. After
25 termination of the period of declarant control, the executive board may act by
26 unanimous consent only to undertake ministerial actions or to implement actions
27 previously taken at a meeting of the executive board.

28 (m) Even if an action by the executive board is not in compliance with this
29 section, it is valid unless set aside by a court. A challenge to the validity of an action of
30 the executive board for failure to comply with this section may not be brought more
31 than 60 days after the minutes of the executive board of the meeting at which the action
32 was taken are approved or the record of that action is distributed to unit owners,
33 whichever is later."

34 **SECTION 14.** G.S. 47C-3-116 reads as rewritten:

35 **"§ 47C-3-116. Lien for assessments.**

36 (a) Any assessment levied against a unit remaining unpaid for a period of ~~30~~ 90
37 days or longer shall constitute a lien on that unit when a claim of lien is filed of record
38 in the office of the clerk of superior court of the county in which the unit is located in
39 the manner provided herein. Prior to filing a claim of lien, the association must make
40 reasonable and diligent efforts to ensure that its records contain the unit owner's current
41 mailing address. No fewer than 15 days prior to filing the lien, the association shall mail
42 a statement of the assessment amount due and an offer to accept payments in
43 installments as provided by subsection (e2) of this section by first-class mail to the
44 physical address of the unit and the unit owner's address of record with the association,
45 and, if different, to the address for the unit owner shown on the county tax records and
46 the county real property records for the unit. If the unit owner is a corporation, the

1 statement shall also be sent by first-class mail to the mailing address of the registered
2 agent for the corporation. Unless the declaration otherwise provides, fees, charges, late
3 charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107,
4 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except
5 as provided in subsections (a1) and (a2) of this section, the ~~association~~ association,
6 acting through the executive board, may foreclose the claim of lien in like manner as a
7 mortgage on real estate ~~under power of sale~~ under Article 2A of Chapter 45 of the
8 General Statutes. Statutes, if the assessment remains unpaid for 90 days or more and the
9 unit owner has failed to accept or comply with the proposed installment plan. The
10 association shall not foreclose the claim of lien unless the executive board votes to
11 commence the proceeding against the specific unit.

12 (a1) An association may not foreclose an association assessment lien under Article
13 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of
14 fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by
15 the association solely associated with fines imposed by the association. The association,
16 however, may enforce the lien by judicial foreclosure as provided in Article 29A of
17 Chapter 1 of the General Statutes.

18 (a2) An association shall not levy, charge, or attempt to collect a service,
19 collection, consulting, or administration fee from any unit owner unless the fee is
20 expressly allowed in the declaration. Any lien secured by debt consisting solely of these
21 fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter
22 1 of the General Statutes.

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

29 (b1) An association shall apply any payments made by the unit owner in the
30 following priority:

- 31 (1) Unpaid assessments.
- 32 (2) Late charges associated with the assessment.
- 33 (3) Attorneys' fees and other collection charges.
- 34 (4) Fees, fines, interest, and associated late fees.

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 shall
41 include costs and reasonable attorneys' fees for the prevailing party. If the unit owner
42 does not contest the collection of debt and enforcement of a lien after the expiration of
43 the 15-day period following notice as required in subsection (e1) of this section, then
44 reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200),
45 not including costs or expenses incurred. The collection of debt and enforcement of a
46 lien remain uncontested as long as the unit owner does not dispute, contest, or raise any

1 objection, defense, offset, or counterclaim as to the amount or validity of the debt and
2 lien asserted or the association's right to collect the debt and enforce the lien as provided
3 in this section. The attorneys' fee limitation in this subsection shall not apply to judicial
4 foreclosures or proceedings authorized under subsection (d) of this section or
5 G.S. 47C-4-117.

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

20 (e2) ~~The association, acting through its executive board and in the board's sole~~
21 ~~discretion, may agree to~~ association shall allow payment of an outstanding balance in
22 installments, accordance with an installment plan. An installment plan under this
23 subsection shall consist of equal periodic payments made over a reasonable time based
24 on the amount of the outstanding balance. The accumulation of late charges associated
25 with the outstanding balance shall cease when the unit owner agrees to make payments
26 in accordance with an installment plan. Neither the association nor the unit owner is
27 obligated to offer or accept any proposed installment schedule. The association shall
28 mail a statement of the assessment amount due and an offer to accept payments under a
29 proposed installment plan in accordance with subsection (a) of this section. If the unit
30 owner accepts the proposed installment plan and subsequently fails to comply with the
31 terms of the plan, the association may file a claim of lien in accordance with subsection
32 (a) of this section when a scheduled payment remains unpaid for 30 days or longer.
33 Reasonable administrative fees and costs for accepting and processing installments may
34 be added to the outstanding balance and included in an installment payment schedule.
35 Reasonable attorneys' fees may be added to the outstanding balance and included in an
36 installment schedule only after the unit owner has been given notice as required in
37 subsection (e1) of this section.

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

45 (g) A claim of lien shall set forth the name and address of the association, the
46 name of the record owner of the lot at the time the claim of lien is filed, a description of

1 the lot, and the amount of the lien claimed. The first page of the claim of lien shall
2 contain the following statement in print that is in boldface, capital letters and no smaller
3 than the largest print used elsewhere in the document: "THIS DOCUMENT
4 CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT
5 PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH
6 FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A
7 MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the claim of
8 lien on behalf of the association shall attach to and file with the claim of lien a
9 certificate of service attesting to the attempt of service on the record owner, which
10 service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy
11 of a summons and a complaint. If the actual service is not achieved, the person signing
12 the claim of lien on behalf of the association shall be deemed to have met the
13 requirements of this subsection if service has been attempted pursuant to both of the
14 following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien
15 by regular, first-class mail, postage prepaid to the physical address of the unit and the
16 unit owner's address of record with the association, and, if different, to the address for
17 the unit owner shown on the county tax records and the county real property records for
18 the unit. In the event that the owner of record is not a natural person, and actual service
19 is not achieved, the person signing the claim of lien on behalf of the association shall be
20 deemed to have met the requirements of this subsection if service has been attempted
21 once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through
22 G.S. 1A-1, Rule 4(j)(9)."

23 **SECTION 15.(a)** G.S. 47C-3-118 reads as rewritten:

24 **"§ 47C-3-118. Association records.**

25 (a) ~~The association shall keep financial records sufficiently detailed to enable the~~
26 ~~association to comply with this chapter. All financial and other records, including records of~~
27 ~~meetings of the association and executive board, shall be made reasonably available for~~
28 ~~examination by any unit owner and the unit owner's authorized agents as required by the~~
29 ~~bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation.~~
30 ~~If the bylaws do not specify particular records to be maintained, the association shall keep~~
31 ~~accurate records of all cash receipts and expenditures and all assets and liabilities. The~~
32 ~~association must retain the following:~~

- 33 (1) Detailed records of receipts and expenditures affecting the operation
34 and administration of the association and other appropriate accounting
35 records.
- 36 (2) Minutes of all meetings of its unit owners and executive board
37 including executive sessions, a record of all actions taken by the unit
38 owners or executive board without a meeting, and a record of all
39 actions taken by a committee in place of the executive board on behalf
40 of the association.
- 41 (3) The names of unit owners in a form that permits preparation of a list of
42 the names of all unit owners and the addresses at which the association
43 communicates with them, in alphabetical order showing the number of
44 votes each owner is entitled to cast.
- 45 (4) Its original or amended organizational documents, bylaws and all
46 amendments to them, and all rules currently in effect.

- 1 (5) All financial statements and tax returns of the association for the past
2 three years.
- 3 (6) A list of the names and addresses of its current executive board
4 members and officers.
- 5 (7) Its most recent annual income and expense statement and balance
6 sheet as required by subsection (a1) of this section.
- 7 (8) Financial and other records sufficiently detailed to enable the
8 association to comply with other requirements of law.
- 9 (9) Copies of current contracts to which it is a party.
- 10 (10) Records of executive board or committee actions to approve or deny
11 any requests for design or architectural approval from unit owners.
- 12 (11) Ballots, proxies, and other records related to voting by unit owners for
13 one year after the election, action, or vote to which they relate.

14 (a1) In addition to any specific information that is required by the bylaws to be
15 assembled and reported to the unit owners at specified times, the association shall make
16 an annual income and expense statement and balance sheet available to all unit owners
17 at no charge and within 75 days after the close of the fiscal year to which the
18 information relates. Notwithstanding the bylaws, a more extensive compilation, review,
19 or audit of the association's books and records for the current or immediately preceding
20 fiscal year may be required by a vote of the majority of the executive board or by the
21 affirmative vote of a majority of the unit owners present and voting in person or by
22 proxy at any annual meeting or any special meeting duly called for that purpose.

23 (b) The association, upon written request, shall furnish a unit owner or the unit owner's
24 authorized agents a statement setting forth the amount of unpaid assessments and other charges
25 against a unit. The statement shall be furnished within 10 business days after receipt of the
26 request and is binding on the association, the executive board, and every unit 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 (d) Subject to subsections (e) and (f) of this section, all records retained by an
35 association must be available for examination and copying by a unit owner or the
36 owner's authorized agent as follows:

- 37 (1) During reasonable business hours or at a mutually convenient time and
38 location.
- 39 (2) Upon 15 days' notice in a request reasonably identifying the specific
40 records of the association requested.

41 (e) Records retained by an association may be withheld from inspection and
42 copying to the extent that they concern one of the following matters:

- 43 (1) Personnel, salary, and medical records relating to specific individuals.
- 44 (2) Contracts, leases, and other commercial transactions to purchase or
45 provide goods or services currently being negotiated.
- 46 (3) Existing or potential litigation or mediation, arbitration, or
47 administrative proceedings.

- 1 (4) Existing or potential matters involving federal, state, or local
- 2 administrative or other formal proceedings before a governmental
- 3 tribunal for enforcement of the declaration, bylaws, or rules and
- 4 regulations.
- 5 (5) Communications with the association's attorney which are otherwise
- 6 protected by the attorney-client privilege or the attorney work- product
- 7 doctrine.
- 8 (6) Information the disclosure of which would violate law other than this
- 9 Act.
- 10 (7) Records of an executive session of the executive board.
- 11 (8) Individual unit files other than those of the requesting owner.

12 (f) An association may charge a reasonable fee for providing copies of any
 13 records under this section and for supervising the unit owner's inspection.

14 (g) A right to copy records under this section includes the right to receive copies
 15 by photocopying or other means, including copies through an electronic transmission if
 16 available upon request by the unit owner.

17 (h) An association is not obligated to compile or synthesize information.

18 (i) Information provided pursuant to this section may not be used for commercial
 19 purposes."

20 **SECTION 15.(b)** G.S. 47C-3-103 is amended by adding a new subsection to
 21 read:

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

29 **SECTION 16.** Article 3 of Chapter 47C of the General Statutes is amended
 30 by adding a new section to read:

31 "**§ 47C-3-120 Alternative dispute resolution allowed.**

32 Parties to a dispute arising under this Chapter, an association's declaration, bylaws,
 33 or rules and regulations, may agree to resolve the dispute by any form of binding or
 34 nonbinding alternative dispute resolution, except that a declarant may agree with the
 35 association to do so only after the period of declarant control has expired. Parties
 36 electing to use alternative dispute resolution for disputes arising under this Chapter shall
 37 only use mediators certified by the Dispute Resolution Commission. An agreement to
 38 submit to any form of binding alternative dispute resolution must be in a record
 39 authenticated by the parties."

40 **SECTION 17.** G.S. 47C-4-101(b) reads as rewritten:

41 "**§ 47C-4-101. Applicability; waiver.**

42 ...

43 (b) Neither a public offering statement nor a resale certificate need be prepared or
 44 delivered in the case of a disposition which is:is classified as one or more of the
 45 following:

- 46 (1) Gratuitous;Gratuitous.

- (2) Pursuant to court ~~order;~~ order.
- (3) By a government or governmental ~~agency;~~ agency.
- (4) By foreclosure or deed in lieu of ~~foreclosure;~~ foreclosure.
- (5) To a person in the business of selling real estate who intends to offer those units to ~~purchasers;~~ or purchasers.
- (6) Subject to cancellation at any time for any reason by the purchasers without ~~penalty;~~ penalty.
- (7) Of property restricted to nonresidential purposes."

SECTION 18. G.S. 47C-4-109 reads as rewritten:

"§ 47C-4-109. Resales of units.

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under G.S. 47C-4-101(b), a unit owner shall furnish to a prospective purchaser before the earlier of conveyance or transfer of the right of possession to the unit, a statement setting forth the monthly common expense assessment and any other fees payable by unit owners. a copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association, and a certificate containing all of the following:

- (1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association.
- (2) A statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the owner who is selling the unit.
- (3) A statement of any other fees payable by the owner who is selling the unit.
- (4) A statement of any capital expenditures approved by the association for the current and succeeding fiscal years.
- (5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects
- (6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.
- (7) The current operating budget of the association.
- (8) statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant.
- (9) A statement describing any insurance coverage provided for the benefit of unit owners.
- (10) A statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration.
- (11) A statement as to whether the executive board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium which has not been cured.

- 1 (12) A statement of the remaining term of any leasehold estate affecting the
2 condominium and the provisions governing any extension or renewal
3 thereof.
4 (13) A statement of any restrictions in the declaration affecting the amount
5 that may be received by a unit owner upon sale, condemnation,
6 casualty loss to the unit or the condominium, or termination of the
7 condominium.
8 (14) In a cooperative, an accountant's statement, if any was prepared, as to
9 the deductibility for federal income tax purposes by the unit owner of
10 real estate taxes and interest paid by the association.
11 (15) A statement describing any pending sale or encumbrance of common
12 elements; and
13 (16) A statement disclosing the effect on the unit to be conveyed of any
14 restrictions on the owner's right to use or occupy the unit or to lease
15 the unit to another person.

16 (b) The association, within 10 days after a request by a unit owner, shall furnish a
17 certificate containing the information and copies of all documents necessary to enable
18 the unit owner to comply with this section. A unit owner providing a certificate pursuant
19 to subsection (a) is not liable to the purchaser for any erroneous information provided
20 by the association and included in the certificate.

21 (c) A purchaser is not liable for any unpaid assessment or fee greater than the
22 amount set forth in the certificate prepared by the association. A unit owner is not liable
23 to a purchaser for the failure or delay of the association to provide the certificate in a
24 timely manner, but the purchase contract is voidable by the purchaser until the
25 certificate has been provided and for five days thereafter or until conveyance, whichever
26 first occurs."

27 **SECTION 19.** This part is effective when it becomes law, and applies to all:
28 (1) condominiums created in this State on or after that date; and (2) condominiums
29 created in this State before that date, except that the act applies only with respect to
30 events and circumstances occurring on after that date and does not invalidate existing
31 provisions of the declaration, bylaws, or plats or plans of those condominiums. The
32 declaration, bylaws, or plats and plans of any condominium created before the effective
33 date of this act may be amended to achieve any result permitted by this act, regardless
34 of what applicable law provided before that date.

35
36 **PART III. GENERAL PROVISIONS**

37 **SECTION 20.** The Consumer Protection Division of the Department of
38 Justice shall provide general information to and receive complaints from the public
39 regarding the implementation of this act. The Department of Justice shall compile all
40 complaints relating to homeowner associations into an annual report. The report shall be
41 published on the Department's website.

42 **SECTION 21.** If any section or provision of this act is declared
43 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
44 whole or any part other than the part so declared to be unconstitutional or invalid.

45 **SECTION 22.** Except as provided in Sections 10 and 19, this act is effective
46 when it becomes law.

