General Assembly of North Carolina
Session 2005

House Bill 1541

Short Title: Homeowner Association Amendments. (Public)

Sponsors: Representatives Earle, Weiss, Stam, Barnhart (Primary Sponsors); and Carney.

Referred to: Finance.

April 21, 2005

A Bill to be Entitled

An Act to Amend the Laws Governing Homeowner Associations to Provide Greater Protections for Homeowners.

The General Assembly of North Carolina enacts:

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

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

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

(11) Impose reasonable charges for late payment of assessments, not to exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of the amount of the unpaid assessment and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;"

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

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

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). The adjudicatory panel shall be composed of members of the association who are not officers of the association or members of the executive board. Decisions by the adjudicatory panel shall be appealable by the lot owner to the full executive board. If the
executive board fails to appoint an adjudicatory panel to hear such matters, hearings
under this section shall be held before the full executive board. The lot owner charged
shall be given notice of the charge, opportunity to be heard and to present evidence, and
notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed
one hundred fifty dollars ($150.00) may be imposed for the violation and
without further hearing, for each day more than 10 days after the decision that the
violation occurs, up to a maximum of one thousand dollars ($1,000). Such fines
shall be G.S. 47F-3-116. If it is decided that a suspension of planned community
privileges or services should be imposed, the suspension may be continued without
further hearing until the violation or delinquency is cured."

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

"§ 47F-3-108. Meetings.
(a) A meeting of the association shall be held at least once each year. Special
meetings of the association may be called by the president, a majority of the executive
board, or by lot owners having ten percent (10%), or any lower percentage specified in
the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in
advance of any meeting, the secretary or other officer specified in the bylaws shall
cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
address of each lot or to any other mailing address designated in writing by the lot
owner, or sent by electronic means, including by electronic mail over the Internet, to an
electronic mailing address designated in writing by the lot owner. The notice of any
meeting shall state the time and place of the meeting and the items on the agenda,
including the general nature of any proposed amendment to the declaration or bylaws,
any budget changes, and any proposal to remove a director or officer.

(b) All meetings of the association and the board of directors shall be open to all
members of the association or any person designated by a member in writing as the
member's representative and all members or designated representatives so desiring shall
be permitted to attend and speak at an appropriate time during the deliberations and
proceedings. The board may place reasonable time restrictions on those persons
speaking during the meeting but shall permit a member or a member's representative to
speak before the association or board takes formal action on an item under discussion in
addition to any other opportunities to speak. The board shall provide for a reasonable
number of persons to speak on each side of an issue.

(c) Except as otherwise provided for in the declaration, meetings of the
association and board of directors shall be conducted in accordance with general
principles of parliamentary procedure. The provisions of the most recent edition of
Robert's Rules of Order shall govern any procedural matter for which no other provision
has been made."

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

"§ 47F-3-116. Lien for assessments.
(a) Any assessment levied against a lot remaining unpaid for a period of 30 days
or longer shall constitute a lien on that lot when a claim of lien is filed of record in the
office of the clerk of superior court of the county in which the lot is located in the
manner provided herein. Except for fines assessed under G.S. 47F-3-107.1, interest on
unpaid fines and attorneys' fees allowed for the collection of fines, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, interest other than interest on fines, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. An association may not foreclose an association assessment lien if the debt securing the lien consists solely of fines assessed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines assessed by the association. A lot owner may redeem the property from any purchaser at a sale foreclosing an association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Article 2A of Chapter 45 of the General Statutes.

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

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

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

(e) A judgment, decree, or order in any action brought under this section shall include costs and may include reasonable attorneys' fees for the prevailing party in an amount not to exceed the amount in controversy. The amount in controversy means the principal obligation due at the time of the filing of the proceeding together with interest on the principal amount actually accrued through the date of the order or judgment.

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

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

SECTION 5. Article 3 of Chapter 47F is amended by adding the following new sections to read:

"§ 47F-3-116.1. Collections."
(a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than two thousand five hundred dollars ($2,500), not including any late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Article 19 of Chapter 7A of the General Statutes. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 28 of Chapter 1 of the General Statutes. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:
   a. The amount owed as of the date of filing the complaint in the small claims court proceeding.
   b. In the discretion of the court, an additional amount described in sub-subdivision a. of this subsection equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds two thousand five hundred dollars ($2,500). An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G. S. 7A-38.4A.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of two thousand five hundred dollars ($2,500) or more, not including any late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in G. S. 7A-38.4A. The decision to pursue dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of
directors of the association and may not be delegated to an agent of the
association. The board shall approve the decision by a majority vote of
the board members in an executive session. The board shall record the
vote in the minutes of that meeting. The board shall maintain the
confidentiality of the owner or owners of the separate interest by
identifying the matter by the parcel number of the property, rather than
the name of the owner or owners.

(3) The board shall provide personal notice to an owner of a separate
interest who occupies the separate interest if the board votes to
foreclose upon the separate interest. The board shall provide written
notice to an owner of a separate interest who does not occupy the
separate interest by first-class mail, postage prepaid, at the most
current address shown on the books of the association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for
delinquent assessments shall be subject to a right of redemption as set
forth in G.S. 47F-3-116.

(5) A nonjudicial or judicial foreclosure by an association to collect upon
a debt for delinquent assessments shall comply with the following
requirements:

a. The minimum bid shall be at least seventy-five percent (75%)
of the appraised value, excluding any senior liens subject to
which the successful bidder would be taking title.

b. An appraiser appropriately licensed under Article 1 of Chapter
93E of the General Statutes shall perform the exterior appraisal.
The cost of the appraisal shall be recouped at sale if the
property is auctioned or at cure of the default prior to sale. The
appraisal shall be completed at least 30 days, but no more than
60 days, prior to sale unless, in the event of a judicial
foreclosure, the court orders a different completion date.

§ 47F-3-117. Financial reporting.

(a) The association shall prepare an annual financial report within 60 days after
the close of the fiscal year. The association shall, within 75 days after the close of the
fiscal year, provide each lot owner with a copy of the annual financial report or a
written notice that a copy of the financial report is available upon request at no charge to
the lot owner.

(b) Financial reports shall be prepared as follows:

(1) An association that meets the criteria of this subdivision shall prepare
or cause to be prepared a complete set of financial statements in
accordance with generally accepted accounting principles. The
financial statements shall be based upon the association's total annual
revenues, as follows:

a. An association with total annual revenues of one hundred
thousand dollars ($100,000) or more, but less than two hundred
thousand dollars ($200,000), shall prepare compiled financial
statements.

b. An association with total annual revenues of at least two
hundred thousand dollars ($200,000), but less than four hundred
thousand dollars ($400,000), shall prepare reviewed financial
statements.

c. An association with total annual revenues of four hundred
thousand dollars ($400,000) or more shall prepare audited
financial statements.

d. An association with total annual revenues of less than one
hundred thousand dollars ($100,000) shall prepare a report of
cash receipts and expenditures.

(2) An association in a community of fewer than 50 parcels, regardless of
the association's annual revenues, may prepare a report of cash receipts
and expenditures in lieu of financial statements required by
subdivision (1) of this subsection unless the declaration provides
otherwise.

(3) A report of cash receipts and disbursement must disclose the amount
of receipts by accounts and receipt classifications and the amount of
expenses by accounts and expense classifications, including the
following, as applicable: costs for security, professional, and
management fees and expenses; taxes; costs for recreation facilities;
expenses for refuse collection and utility services; expenses for lawn
care; costs for building maintenance and repair; insurance costs;
administration and salary expenses; and reserves if maintained by the
association.

(c) If twenty percent (20%) of the parcel owners petition the board for a level of
financial reporting higher than that required by this section, the association shall duly
notice and hold a meeting of members within 30 days of receipt of the petition for the
purpose of voting on raising the level of reporting for that fiscal year. Upon approval of
a majority of the total voting interests of the lot owners, the association shall prepare or
cause to be prepared, shall amend the budget or adopt a special assessment to pay for
the financial report regardless of any provision to the contrary in the declaration, and
shall provide within 90 days of the meeting or the end of the fiscal year, whichever
occurs later, one of the following:

(1) Compiled, reviewed, or audited financial statements, if the association
is otherwise required to prepare a report of cash receipts and
expenditures.

(2) Reviewed or audited financial statements, if the association is
otherwise required to prepare compiled financial statements.

(3) Audited financial statements, if the association is otherwise required to
prepare reviewed financial statements.
(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared, one of the following:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement.
2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement.
3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

SECTION 6. G.S. 47F-3-120 reads as rewritten:

"§ 47F-3-120. Declaration limits on attorneys' fees.

Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party up to a maximum of two thousand five hundred dollars ($2,500), if recovery of attorneys' fees is allowed in the declaration. A lot owner is not liable for attorneys' fees incurred by the association relating to a matter described by notice under G.S. 47F-3-107.1 if the attorneys' fees incurred before the conclusion of the hearing under G.S. 47F-3-107.1. Attorneys' fees may be collected by the association only if the lot owner is provided a written notice that attorneys' fees and costs will be charged to the lot owner if the delinquency or violation continues after a date certain, at least 10 days after the notice is received by the lot owner."

SECTION 7. Article 3 of Chapter 47F of the General Statutes is amended by adding the following new section to read:

"§ 47F-3-121. American flag and political sign displays.

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

1. Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:
   a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:
      1. Flag of the United States of America;
      2. American flag; or
      3. United States flag.
   b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of the United States flag only if
the restriction specifically states: 'THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE
FLAG OF THE UNITED STATES OF AMERICA'.

This subdivision shall apply to owners of property who display the
flag of the United States on their property and does not apply to
common areas, easements, rights-of-way, or other areas owned by
others.

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

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

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

When permitted under this subdivision, an association may prohibit
the display of political signs earlier than 45 days before the day of the
election and later than seven days after an election day. An association
may regulate the size and number of political signs that may be placed
on a member's property if the association's regulation is no more
restrictive than any applicable city, town, or county ordinance that
regulates the size and number of political signs on residential property.
If the local government in which the property is located does not
regulate the size and number of political signs on residential property,
the association shall permit at least one political sign with the
maximum dimensions of 24 inches by 24 inches on a member's
property. For the purposes of this subdivision, "political sign" means a
sign that attempts to influence the outcome of an election, including
supporting or opposing an issue on the election ballot. This
subdivision shall apply to owners of property who display political
signs on their property and does not apply to common areas,
easements, rights-of-way, or other areas owned by others."

SECTION 8. G.S. 47C-3-102(11) reads as rewritten:

"§ 47C-3-102. Powers of unit owners' association.
(a) Unless the declaration expressly provides to the contrary, the association,
even if unincorporated, may:

... 

(11) Impose charges for late payment of assessments, not to
exceed the greater of fifteen dollars ($15.00) or ten percent (10%) of
the amount of the unpaid assessment and, after notice and an
opportunity to be heard, levy reasonable fines not to exceed one
hundred fifty dollars ($150.00) (G.S. 47C-3-107.1) for violations of
the declaration, bylaws, and rules and regulations of the association;”.

SECTION 9. G.S. 47C-3-107.1 reads as rewritten:

"§ 47C-3-107.1. Charges for late payments, fines.
The bylaws of the association may provide for a hearing before an adjudicatory
panel to determine if a unit owner should be fined not to exceed one hundred fifty
dollars ($150.00) for a violation of the declaration, bylaws or rules and regulations of
the association. Such panel shall accord to the party charged with the violation notice of
the charge, opportunity to be heard and to present evidence, and notice of the decision.
Such a fine shall be an assessment secured by lien under G.S. 47C-3-116. Unless a
specific procedure for the imposition of fines or suspension of condominium privileges
or services is provided for in the declaration, a hearing shall be held before an
adjudicatory panel appointed by the executive board to determine if any unit owner
should be fined or if condominium privileges or services should be suspended pursuant
to the powers granted to the association in G.S. 47C-3-102(11). The adjudicatory panel
shall be composed of members of the association who are not officers of the association
or members of the executive board. Decisions by the adjudicatory panel shall be
appealable by the unit owner to the full executive board. If the executive board fails to
appoint an adjudicatory panel to hear such matters, hearings under this section shall be
held before the full executive board. The unit owner charged shall be given notice of the
charge, opportunity to be heard and to present evidence, and notice of the decision. If it
is decided that a fine should be imposed, a fine not to exceed one hundred dollars
($100.00) may be imposed for the violation and without further hearing, for each day
more than 10 days after the decision that the violation occurs, up to a maximum of one
thousand dollars ($1,000). Such fines shall be assessments secured by liens on the
property but may not be foreclosed under G.S. 47C-3-116. If it is decided that a
suspension of condominium privileges or services should be imposed, the suspension
may be continued without further hearing until the violation or delinquency is cured."

SECTION 10. G.S. 47C-3-108 reads as rewritten:

"§ 47C-3-108. Meetings.
(a) A meeting of the association shall be held at least once each year. Special
meetings of the association may be called by the president, a majority of the executive
board, or by unit owners having twenty percent (20%) or any lower percentage specified
in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in
advance of any meeting, the secretary or other officer specified in the bylaws shall
cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
address of each unit or to any other mailing address designated in writing by the unit
owner, or sent by electronic means, including by electronic mail over the Internet, to an
electronic mailing address designated in writing by the unit owner. The notice of any
meeting must state the time and place of the meeting and the items on the agenda,
including the general nature of any proposed amendment to the declaration or bylaws,
any budget changes, and any proposal to remove a director or officer.
(b) All meetings of the association and the board of directors shall be open to all members of the association or any person designated by a member in writing as the member's representative, and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's representative to speak before the association or board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

(c) Except as otherwise provided for in the declaration, meetings of the association and board of directors shall be conducted in accordance with general principles of parliamentary procedure. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made."

SECTION 11. G.S. 47C-3-116 reads as rewritten:

"§ 47C-3-116. Lien for assessments.

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. Except for fines assessed under G.S. 47C-3-107.1, interest on unpaid fines and attorneys' fees allowed for the collection of fines, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest other than interest on fines, charged pursuant to G.S. 47C-3-102(10), (11), and (12), G.S. 47C-3-107(d), and 47C-3-107.1, G.S. 47C-3-102(10), (11), and (12) and G.S. 47C-3-107(d), are enforceable as assessments under this section. An association may not foreclose an association assessment lien if the debt securing the lien consists solely of fines assessed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines assessed by the association.

A lot owner may redeem the property from any purchaser at a sale foreclosing an association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner under Article 2A of Chapter 45 of the General Statutes.

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

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.
(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section must include costs and may include reasonable attorneys' fees for the prevailing party in an amount not to exceed the amount in controversy. The amount in controversy means the principal obligation due at the time of the filing of the proceeding together with interest on the principal amount actually accrued through the date of the order or judgment.

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

SECTION 12. Article 3 of Chapter 47C of the General Statutes is amended by adding the following new sections to read: "§ 47C-3-116.1. Collections.

(a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than two thousand five hundred dollars ($2,500), not including any late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Article 19 of Chapter 7A of the General Statutes. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 28 of Chapter 1 of the General Statutes. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

a. The amount owed as of the date of filing the complaint in the small claims court proceeding.

b. In the discretion of the court, an additional amount described in sub-subdivision a. of this subsection equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds two
thousand five hundred dollars ($2,500). An association that chooses to
record a lien under these provisions, prior to recording the lien, shall
offer the owner and, if so requested by the owner, participate in
dispute resolution as set forth in G. S. 7A-38.4A.

(3) Any other manner provided by law, except for judicial or nonjudicial
foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments
of an amount of two thousand five hundred dollars ($2,500) or more, not including any
late charges, fees and costs of collection, attorneys' fees, or interest, may use judicial or
nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the
association shall offer the owner and, if so requested by the owner,
participate in dispute resolution as set forth in G. S. 7A-38.4A. The
decision to pursue dispute resolution shall be the choice of the owner,
except that binding arbitration shall not be available if the association
intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments
that has been validly recorded shall be made only by the board of
directors of the association and may not be delegated to an agent of the
association. The board shall approve the decision by a majority vote of
the board members in an executive session. The board shall record the
vote in the minutes of that meeting. The board shall maintain the
confidentiality of the owner or owners of the separate interest by
identifying the matter by the parcel number of the property, rather than
the name of the owner or owners.

(3) The board shall provide personal notice to an owner of a separate
interest who occupies the separate interest if the board votes to
foreclose upon the separate interest. The board shall provide written
notice to an owner of a separate interest who does not occupy the
separate interest by first-class mail, postage prepaid, at the most
current address shown on the books of the association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for
delinquent assessments shall be subject to a right of redemption as set
forth in G. S. 47C-3-116.

(5) A nonjudicial or judicial foreclosure by an association to collect upon
a debt for delinquent assessments shall comply with the following
requirements:

a. The minimum bid shall be at least seventy-five percent (75%)
of the appraised value, excluding any senior liens subject to
which the successful bidder would be taking title.

b. An appraiser appropriately licensed under Article 1 of Chapter
93E of the General Statutes shall perform the exterior appraisal.
The cost of the appraisal shall be recouped at sale if the
property is auctioned or at cure of the default prior to sale. The
appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.

§ 47C-3-116.2. Financial reporting.

(a) The association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within 75 days after the close of the fiscal year, provide each lot owner with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the lot owner.

(b) Financial reports shall be prepared as follows:

(1) An association that meets the criteria of this subdivision shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements shall be based upon the association's total annual revenues, as follows:

a. An association with total annual revenues of one hundred thousand dollars ($100,000) or more, but less than two hundred thousand dollars ($200,000), shall prepare compiled financial statements.

b. An association with total annual revenues of at least two hundred thousand dollars ($200,000), but less than four hundred thousand dollars ($400,000), shall prepare reviewed financial statements.

c. An association with total annual revenues of four hundred thousand dollars ($400,000) or more shall prepare audited financial statements.

d. An association with total annual revenues of less than one hundred thousand dollars ($100,000) shall prepare a report of cash receipts and expenditures.

(2) An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by subdivision (1) of this subsection unless the declaration provides otherwise.

(3) A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.
(c) If twenty percent (20%) of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the lot owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later, one of the following:

(1) Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures.
(2) Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements.
(3) Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared, one of the following:

(1) A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement.
(2) A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement.
(3) A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

§ 47C-3-121. American flag and political sign displays.
Notwithstanding any provision in any declaration of covenants, no restriction on the use of land shall be construed to:

(1) Regulate or prohibit the display of the flag of the United States, of a size no greater than four feet by six feet, which is displayed in accordance with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States unless:
   a. For restrictions registered prior to October 1, 2005, the restriction specifically uses the following terms:
      1. Flag of the United States of America;
      2. American flag; or
      3. United States flag.
   b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to
regulate or prohibit the display of the United States flag only if the restriction specifically states: "THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA."

This subdivision shall apply to owners of property who display the flag of the United States on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

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

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

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

When permitted under this subdivision, an association may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on their property and does not apply to common areas, easements, rights-of-way, or other areas owned by others."

SECTION 13. G.S. 47C-4-117 reads as rewritten:

"§ 47C-4-117. Effect of violations on rights of action; attorney's fees.

If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court may award reasonable attorney's fees to the prevailing party. Except as otherwise
provided for in G.S. 47C-3-116(e), in an action to enforce provisions of the articles of
incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court
may award reasonable attorneys' fees to the prevailing party up to a maximum of two
thousand five hundred dollars ($2,500), if recovery of attorneys' fees is allowed in the
declaration. A unit owner is not liable for attorneys' fees incurred by the association
relating to a matter described by notice under G.S. 47C-3-107.1 if the attorneys' fees are
incurred before the conclusion of the hearing under G.S. 47C-3-107.1. Attorneys' fees
may be collected by the association only if the unit owner is provided a written notice
that attorneys' fees and cost will be charged to the unit owner if the delinquency or
violation continues after a date certain, at least 10 days after the notice is received by
the unit owner."

SECTION 14. This act becomes effective October 1, 2005, and applies to
violations occurring on or after that date and fiscal years beginning on or after that date.