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Short Title: Homeowner Association Amendments.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

...

(11) Impose reasonable charges for late payment of ~~assessments~~
assessments, not to exceed the greater of twenty dollars (\$20.00) per
month or ten percent (10%) of any assessment installment unpaid and,
after notice and an opportunity to be heard, suspend privileges or
services provided by the association (except rights of access to lots)
during any period that assessments or other amounts due and owing to
the association remain unpaid for a period of 30 days or longer;

...."

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

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

1 of all persons present and entitled to vote at any meeting of the lot owners at which a
2 quorum is present, may remove any member of the executive board with or without
3 cause, other than a member appointed by the declarant."

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

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

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

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

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

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

33 **"§ 47F-3-108. Meetings.**

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

1 including the general nature of any proposed amendment to the declaration or bylaws,
2 any budget changes, and any proposal to remove a director or officer.

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

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

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

13 **"§ 47F-3-116. Lien for assessments.**

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

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

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

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

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

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

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

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

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

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

1 common expenses collectible from all the lot owners including such purchaser, its heirs,
2 successors, and assigns.

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

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

7 "**§ 47F-3-118. Association records.**

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

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

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

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

38 "**§ 47F-3-121. American and State flags and political sign displays.**

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

- 41 (1) Regulate or prohibit the display of the flag of the United States or
42 North Carolina, of a size no greater than four feet by six feet, which is
43 displayed in accordance with or in a manner consistent with the

1 patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing
2 the display and use of the flag of the United States unless:

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

5 1. Flag of the United States of America;

6 2. American flag;

7 3. United States flag; or

8 4. North Carolina flag.

9 b. For restrictions registered on or after October 1, 2005, the
10 restriction shall be written on the first page of the instrument or
11 conveyance in print that is in boldface type, capital letters, and
12 no smaller than the largest print used elsewhere in the
13 instrument or conveyance. The restriction shall be construed to
14 regulate or prohibit the display of the United States or North
15 Carolina flag only if the restriction specifically states: **'THIS**
16 **DOCUMENT REGULATES OR PROHIBITS THE**
17 **DISPLAY OF THE FLAG OF THE UNITED STATES OF**
18 **AMERICA OR STATE OF NORTH CAROLINA'.**

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

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

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

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

37 Even when display of a political sign is permitted under this
38 subdivision, an association (i) may prohibit the display of political
39 signs earlier than 45 days before the day of the election and later than
40 seven days after an election day, and (ii) may regulate the size and
41 number of political signs that may be placed on a member's property if
42 the association's regulation is no more restrictive than any applicable
43 city, town, or county ordinance that regulates the size and number of
44 political signs on residential property. If the local government in which

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

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

12 **"§ 47F-1-102. Applicability.**

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

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

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

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

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

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

1 declaration specifies. To the extent the procedures and requirements for amendment in
2 the declaration conflict with the provisions of this subsection, this subsection shall
3 control with respect to any amendment to provide that this Chapter applies to that
4 planned community.

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

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

8 "**§ 47C-3-102. Powers of unit owners' association.**

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

11 ...

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

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

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

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

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

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

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

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

42 "**§ 47C-3-107.1. ~~Charges for late payments, fines.~~Procedures for fines and**
43 **suspension of condominium privileges or services.**

1 ~~The bylaws of the association may provide for a hearing before an adjudicatory~~
2 ~~panel to determine if a unit owner should be fined not to exceed one hundred fifty~~
3 ~~dollars (\$150.00) for a violation of the declaration, bylaws or rules and regulations of~~
4 ~~the association. Such panel shall accord to the party charged with the violation notice of~~
5 ~~the charge, opportunity to be heard and to present evidence, and notice of the decision.~~
6 ~~Such a fine shall be an assessment secured by lien under G.S. 47C-3-116. Unless a~~
7 ~~specific procedure for the imposition of fines or suspension of condominium privileges~~
8 ~~or services is provided for in the declaration, a hearing shall be held before the~~
9 ~~executive board or an adjudicatory panel appointed by the executive board to determine~~
10 ~~if any unit owner should be fined or if condominium privileges or services should be~~
11 ~~suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11).~~
12 ~~Any adjudicatory panel appointed by the executive board shall be composed of~~
13 ~~members of the association who are not officers of the association or members of the~~
14 ~~executive board. The unit owner charged shall be given notice of the charge,~~
15 ~~opportunity to be heard and to present evidence, and notice of the decision. If it is~~
16 ~~decided that a fine should be imposed, a fine not to exceed one hundred dollars~~
17 ~~(\$100.00) may be imposed for the violation and without further hearing, for each day~~
18 ~~more than five days after the decision that the violation occurs. Such fines shall be~~
19 ~~assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of~~
20 ~~condominium privileges or services should be imposed, the suspension may be~~
21 ~~continued without further hearing until the violation or delinquency is cured. A unit~~
22 ~~owner may appeal a decision of an adjudicatory panel to the full executive board by~~
23 ~~delivering written notice of appeal to the executive board within 15 days after the date~~
24 ~~of the decision. The executive board may affirm, vacate, or modify the prior decision of~~
25 ~~the adjudicatory body.~~"

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

27 "**§ 47C-3-108. Meetings.**

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

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

1 on the number of persons who speak on each side of an issue and may place reasonable
2 time restrictions on persons who speak.

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

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

7 **"§ 47C-3-116. Lien for assessments.**

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

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

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

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

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

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

42 (e) A judgment, decree, or order in any action brought under this section ~~must~~
43 shall include costs and reasonable attorneys' fees for the prevailing party. If the unit
44 owner does not contest the collection of debt and enforcement of a lien after the

1 expiration of the 15-day period following notice as required in subsection (e1) of this
2 section, then reasonable attorneys' fees shall not exceed one thousand two hundred
3 dollars (\$1,200), not including costs or expenses incurred. The collection of debt and
4 enforcement of a lien remain uncontested as long as the unit owner does not dispute,
5 contest, or raise any objection, defense, offset, or counterclaim as to the amount or
6 validity of the debt and lien asserted or the association's right to collect the debt and
7 enforce the lien as provided in this section. The attorneys' fee limitation in this
8 subsection shall not apply to judicial foreclosures or proceedings authorized under
9 subsection (d) of this section or G.S. 47F-4-117.

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

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

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

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

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

42 **"§ 47C-3-118. Association records.**

43 (a) The association shall keep financial records sufficiently detailed to enable the
44 association to comply with this chapter. All financial and other ~~records~~—records,

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

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

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

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

30 "**§ 47C-3-121. American and State flags and political sign displays.**

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

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

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

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

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

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

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

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

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

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

1 does not apply to common areas, easements, rights-of-way, or other
2 areas owned by others."

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

4 "**§ 47C-1-102. Applicability.**

5 (a) This Chapter applies to all condominiums created within this State after
6 October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106
7 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107
8 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws),
9 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of
10 Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit
11 Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1
12 (Charges for Late Payment, Fines(Procedures for fines and suspension of condominium
13 privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability),
14 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for
15 Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags
16 and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action;
17 Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in
18 construing any of those sections, apply to all condominiums created in this State on or
19 before October 1, 1986, unless the declaration expressly provides to the contrary. Those
20 sections apply only with respect to events and circumstances occurring after October 1,
21 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or
22 plans of those condominiums.

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

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

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