

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE BILL 165

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

Sponsors: Representatives McGee, Weiss, Earle, and Howard (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

February 24, 2011

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

(b) An executive board's determination 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."

SECTION 2.(a) G.S. 47F-3-103(c) is repealed.

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

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

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

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

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

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

24 **"§ 47F-3-108. Meetings.**

25 (a) An association shall hold a meeting of lot owners annually at a time, date, and place
26 stated in or fixed in accordance with the bylaws. ~~A meeting of the association shall be held at~~
27 ~~least once each year.~~ Special meetings of the association may be called by the president, a
28 majority of the executive board, or by lot owners having ten percent (10%), or any lower
29 percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more
30 than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws
31 shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
32 address of each lot or to any other mailing address designated in writing by the lot owner, or
33 sent by electronic means, including by electronic mail over the Internet, to an electronic
34 mailing address designated in writing by the lot owner. If the association does not notify lot
35 owners of a special meeting within 30 days after the requisite number or percentage of lot
36 owners request the secretary to do so, the requesting members may directly notify all the lot
37 owners of the meeting. The notice of any meeting shall state the time and place of the meeting
38 and the items on the agenda, including the general nature of any proposed amendment to the
39 declaration or bylaws, any budget changes, and any proposal to remove a director or officer.
40 Only matters described in a meeting notice may be considered at a special meeting.

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

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

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

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

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

9 (e) Meetings of the executive board and committees of the association authorized to act
10 for the association must be open to the lot owners except during executive sessions. The
11 executive board and those committees may hold an executive session only during a regular or
12 special meeting of the board or a committee. No final vote or action may be taken during an
13 executive session. An executive session may be held only for any of the following purposes:

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

15 (2) To discuss existing or potential litigation or mediation, arbitration, or
16 administrative proceedings.

17 (3) To discuss labor or personnel matters.

18 (4) To discuss contracts, leases, and other commercial transactions to purchase
19 or provide goods or services currently being negotiated, including the review
20 of bids or proposals, if premature general knowledge of those matters would
21 place the association at a disadvantage.

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

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

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

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

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

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

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

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

1 (k) After termination of any period when the declarant controls the association, lot
2 owners may amend the bylaws to vary the procedures for meetings described in subsection (j)
3 of this section.

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

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

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

16 "**§ 47F-3-116. Lien for assessments.**

17 (a) Any assessment levied against a lot remaining unpaid for a period of ~~30~~90 days or
18 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of
19 the clerk of superior court of the county in which the lot is located in the manner provided
20 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
21 to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days
22 prior to filing the lien, the association shall mail a statement of the assessment amount due and
23 an offer to accept payments in installments as provided by subsection (e2) of this section by
24 first-class mail to the physical address of the lot and the lot owner's address of record with the
25 association, and, if different, to the address for the lot owner shown on the county tax records
26 and the county real property records for the lot. If the lot owner is a corporation, the statement
27 shall also be sent by first-class mail to the mailing address of the registered agent for the
28 corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other
29 charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are
30 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)
31 of this section, ~~the association~~the association, acting through the executive board, may foreclose
32 the claim of lien in like manner as a mortgage on real estate ~~under power of sale~~under Article
33 2A of Chapter 45 of the General Statutes. Statutes, if the assessment remains unpaid for 90 days
34 or more and the lot owner has failed to accept or comply with the proposed installment plan.
35 The association shall not foreclose the claim of lien unless the executive board votes to
36 commence the proceeding against the specific lot.

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

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

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

1 **(b1)** An association shall apply any payments made by the lot owner in the following
2 priority:

3 **(1)** Unpaid assessments.

4 **(2)** Late charges associated with the assessment.

5 **(3)** Attorneys' fees and other collection charges.

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

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

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

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

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

37 **(e2)** ~~The association, acting through its executive board and in the board's sole~~
38 ~~discretion, may agree to~~association shall allow payment of an outstanding balance in
39 ~~installments~~accordance with an installment plan. An installment plan under this subsection
40 shall consist of equal periodic payments made over a reasonable time based on the amount of
41 the outstanding balance. The accumulation of late charges associated with the outstanding
42 balance shall cease when the lot owner agrees to make payments in accordance with an
43 installment plan. Neither the association nor the lot owner is obligated to offer or accept any
44 proposed installment schedule.~~The association shall mail a statement of the assessment amount~~
45 due and an offer to accept payments under a proposed installment plan in accordance with
46 subsection (a) of this section. If the lot owner accepts the proposed installment plan and
47 subsequently fails to comply with the terms of the plan, the association may file a claim of lien
48 in accordance with subsection (a) of this section when a scheduled payment remains unpaid for
49 30 days or longer. Reasonable administrative fees and costs for accepting and processing
50 installments may be added to the outstanding balance and included in an installment payment
51 schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in

1 an installment schedule only after the lot owner has been given notice as required in subsection
2 (e1) of this section.

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

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

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

32 **"§ 47F-3-118. Association records.**

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

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

- 1 (5) All financial statements and tax returns of the association for the past three
2 years.
- 3 (6) A list of the names and addresses of its current executive board members
4 and officers.
- 5 (7) Its most recent annual income and expense statement and balance sheet as
6 required by subsection (a1) of this section.
- 7 (8) Financial and other records sufficiently detailed to enable the association to
8 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 any
11 requests for design or architectural approval from lot owners.
- 12 (11) Ballots, proxies, and other records related to voting by lot owners for one
13 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 lot owners at specified times, the association shall make an
16 annual income and expense statement and balance sheet available to all lot owners at no charge
17 and within 75 days after the close of the fiscal year to which the information relates.
18 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's
19 books and records for the current or immediately preceding fiscal year may be required by a
20 vote of the majority of the executive board or by the affirmative vote of a majority of the lot
21 owners present and voting in person or by proxy at any annual meeting or any special meeting
22 duly called for that purpose.

23 (b) The association, upon written request, shall furnish to a lot owner or the lot owner's
24 authorized agents a statement setting forth the amount of unpaid assessments and other charges
25 against a lot. 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 lot owner.

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

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

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

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

- 42 (1) Personnel, salary, and medical records relating to specific individuals.
- 43 (2) Contracts, leases, and other commercial transactions to purchase or provide
44 goods or services currently being negotiated.
- 45 (3) Existing or potential litigation or mediation, arbitration, or administrative
46 proceedings.
- 47 (4) Existing or potential matters involving federal, State, or local administrative
48 or other formal proceedings before a governmental tribunal for enforcement
49 of the declaration, bylaws, or rules and regulations.

1 (5) Communications with the association's attorney which are otherwise
2 protected by the attorney-client privilege or the attorney work product
3 doctrine.

4 (6) Information the disclosure of which would violate law other than this act.

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

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

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

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

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

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

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

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

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

24 "**§ 47F-3-120.1. Alternative dispute resolution allowed.**

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

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

33 "**§ 47F-1-103. Definitions.**

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

36 (1) Reserved."Affiliate of a declarant" means any person who controls, is
37 controlled by, or is under common control with a declarant. A person
38 "controls" a declarant if the person (i) is a general partner, officer, director,
39 or employer of the declarant, (ii) directly or indirectly or acting in concert
40 with one or more other persons, or through one or more subsidiaries, owns,
41 controls, holds with power to vote, or holds proxies representing more than
42 twenty percent (20%) of the voting interests in the declarant, (iii) controls in
43 any manner the election of a majority of the directors of the declarant, or (iv)
44 has contributed more than twenty percent (20%) of the capital of the
45 declarant. A person "is controlled by" a declarant if the declarant (i) is a
46 general partner, officer, director, or employer of the person, (ii) directly or
47 indirectly or acting in concert with one or more other persons, or through
48 one or more subsidiaries, owns, controls, holds with power to vote, or holds
49 proxies representing more than twenty percent (20%) of the voting interests
50 in the person, (iii) controls in any manner the election of a majority of the
51 directors of the person, or (iv) has contributed more than twenty percent

1 (20%) of the capital of the person. Control does not exist if the powers
2 described in this paragraph are held solely as security for an obligation and
3 are not exercised.

4 ...

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

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

9 **"§ 47F-3-103. Executive board members and officers.**

10 ...

11 (d) ~~The~~ Subject to subsection (d1) of this section, the declaration may provide for a
12 period of declarant control of the association, during which period a declarant, or persons
13 designated by the declarant, may appoint and remove the officers and members of the executive
14 board. Regardless of the period provided in the declaration, a period of declarant control
15 terminates no later than the earlier of (i) 120 days after conveyance of seventy-five percent
16 (75%) of the lots (including lots which may be created pursuant to special declarant rights) to
17 lot owners other than a declarant, (ii) two years after all declarants have ceased to offer lots for
18 sale in the ordinary course of business, or (iii) two years after any development right to add
19 new lots was last exercised. A declarant may voluntarily surrender the right to appoint and
20 remove officers and members of the executive board before termination of that period, but in
21 that event the declarant may require, for the duration of the period of declarant control, that
22 specified actions of the association or executive board, as described in a recorded instrument
23 executed by the declarant, be approved by the declarant before they become effective."

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

25 "(d1) Not later than 60 days after conveyance of twenty-five percent (25%) of the lots
26 (including lots which may be created pursuant to special rights) to lot owners other than a
27 declarant, at least one member and not less than twenty-five percent (25%) of the members of
28 the executive board shall be elected by lot owners other than a declarant. Not later than 60 days
29 after conveyance of fifty percent (50%) of the lots (including lots which may be created
30 pursuant to special declarant rights) to lot owners other than a declarant, not less than
31 thirty-three percent (33%) of the members of the executive board shall be elected by lot owners
32 other than the declarant."

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

34 **"§ 47F-3-104. Transfer of special declarant rights.**

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

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

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

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

49 (3) If a transferor retains any special declarant right but transfers other special
50 declarant rights to a successor who is not an affiliate of the declarant, the
51 transferor is liable for any obligations or liabilities imposed on a declarant by

1 this Chapter or by the declaration relating to the retained special declarant
2 rights and arising after the transfer.

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

7 (c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of
8 foreclosure or a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale
9 under Bankruptcy Code or receivership proceedings, of any lots owned by a declarant, or real
10 estate in a lot subject to development rights, a person acquiring title to all the real estate being
11 foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights
12 related to that real estate held by that declarant, or only to any rights reserved in the declaration
13 and held by that declarant to maintain models, sales offices, and signs. The judgment or
14 instrument conveying title shall provide for transfer of only the special declarant rights
15 requested.

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

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

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

25 (2) A successor to any special declarant right, other than a successor described
26 in subdivision (3) of this subsection who is not an affiliate of a declarant, is
27 subject to all obligations and liabilities:

28 a. On a declarant, which relate to the declarant's exercise or nonexercise
29 of special declarant right; or

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

31 1. Misrepresentation by any prior declarant;

32 2. Warranty obligations on improvements made by any previous
33 declarant or made before the planned community was created;

34 3. Breach of any fiduciary obligation by any previous declarant
35 or the declarant's appointees to the executive board; or

36 4. Any liability or obligation imposed on the transferor as a
37 result of the transferor's acts or omissions after the transfer.

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

1 obligation as a declarant other than liability for his or her acts and omissions
2 under G.S. 47F-3-103(d)."

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

4 **"§ 47F-3-105. Termination of contracts and leases of declarant.**

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

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

18 **"§ 47F-3-111. Tort and contract liability.**

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

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

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

28 (1) For all tort losses not covered by insurance carried by the association
29 suffered by the association or that lot owner.

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

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

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

41 **"§ 47F-3-102. Powers of owners' association.**

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

44 ...

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

49"

50 **SECTION 9.(b)** Chapter 47F of the General Statutes is amended by adding a new
51 Article to read:

"Article 4."Disclosures to Purchasers.**"§ 47F-4-101. Applicability; waiver.**

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

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

(1) Gratuitous.

(2) Pursuant to court order.

(3) By a government or governmental agency.

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

(5) To a dealer.

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

(7) Of property restricted to nonresidential purposes.

"§ 47F-4-102. Purchaser's right to cancel.

(a) A person required to deliver a disclosure certificate pursuant to G.S. 47F-4-103(a) shall provide a purchaser with a copy of the certificate before conveyance of the lot, and not later than the date of any contract of sale. Unless a purchaser is given the disclosure certificate more than five days before execution of a contract for the purchase of the lot, 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.

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

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

(a) Unless exempt under G.S. 47F-4-101(b), a seller of lot that is part of a planned community shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of the lot, 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 lot 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 lot.

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

(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) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant.

- 1 (9) A statement describing any insurance coverage provided for the benefit of
2 lot owners.
- 3 (10) A statement as to whether the executive board has given or received written
4 notice that any existing uses, occupancies, alterations, or improvements in or
5 to the lot or to the limited common elements assigned thereto violate any
6 provision of the declaration.
- 7 (11) A statement as to whether the executive board has received written notice
8 from a governmental agency of any violation of environmental, health, or
9 building codes with respect to the lot, the limited common elements assigned
10 thereto, or any other portion of the planned community which has not been
11 cured.
- 12 (12) A statement of the remaining term of any leasehold estate affecting the
13 planned community and the provisions governing any extension or renewal
14 thereof.
- 15 (13) A statement of any restrictions in the declaration affecting the amount that
16 may be received by a lot owner upon sale, condemnation, casualty loss to the
17 lot or the planned community, or termination of the planned community.
- 18 (14) In a cooperative, an accountant's statement, if any was prepared, as to the
19 deductibility for federal income tax purposes by the lot owner of real estate
20 taxes and interest paid by the association.
- 21 (15) A statement describing any pending sale or encumbrance of common
22 elements.
- 23 (16) A statement disclosing the effect on the lot to be conveyed of any
24 restrictions on the owner's right to use or occupy the lot or to lease the lot to
25 another person.

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

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

34 **SECTION 9.(c)** The North Carolina Real Estate Commission shall revise the
35 Residential Property Disclosure Statement developed by it pursuant to G.S. 47E-4 to provide a
36 place for disclosure by sellers of the existence of any homeowners association with
37 responsibility for enforcing rules and regulations relating to the real property and the existence
38 of any restrictive covenants affecting the real property, regardless of whether such restrictive
39 covenants are currently violated by any condition of the real property.

40 **SECTION 10.** This Part is effective when it becomes law and applies to all (i)
41 planned communities created in this State on or after that date, which contain more than 20
42 residential lots and (ii) planned communities created in this State before that date, which
43 contain more than 20 residential lots, except that the act applies only with respect to events and
44 circumstances occurring on or after that date and does not invalidate existing provisions of the
45 declaration, bylaws, or plats or plans of those planned communities. The declaration, bylaws, or
46 plats and plans of any planned community created before the effective date of this act may be
47 amended to achieve any result permitted by this act, regardless of what applicable law provided
48 before that date.

49
50 **PART II. AMENDMENTS TO CONDOMINIUM ACT**
51

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

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

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

10 (1) The association's legal position does not justify taking any or further
11 enforcement action.

12 (2) The covenant, restriction, or rule being enforced is, or is likely to be
13 construed as, inconsistent with law.

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

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

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

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

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

25 **"§ 47C-3-107.2. Adoption of budgets; special assessments.**

26 (a) The executive board, at least annually, shall adopt a proposed budget for the
27 condominium for consideration by the unit owners. Not later than 30 days after adoption of a
28 proposed budget, the executive board shall provide to all the unit owners a summary of the
29 budget, including any reserves, and a statement of the basis on which any reserves are
30 calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more
31 than 60 days after providing the summary for a meeting of the unit owners to consider
32 ratification of the budget. Unless at that meeting a majority of all unit owners or any larger
33 number specified in the declaration reject the budget, the budget is ratified, whether or not a
34 quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners
35 continues until the unit owners ratify a subsequent budget.

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

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

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

46 **"§ 47C-3-108. Meetings.**

47 (a) An association shall hold a meeting of unit owners annually at a time, date, and
48 place stated in or fixed in accordance with the bylaws. ~~A meeting of the association shall be~~
49 ~~held at least once each year.~~ Special meetings of the association may be called by the president,
50 a majority of the executive board, or by unit owners having twenty percent (20%) or any lower
51 percentage specified in the bylaws of the votes in the association. Not less than 10 nor more

1 than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws
2 shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
3 address of each unit or to any other mailing address designated in writing by the unit owner, or
4 sent by electronic means, including by electronic mail over the Internet, to an electronic
5 mailing address designated in writing by the unit owner. If the association does not notify unit
6 owners of a special meeting within 30 days after the requisite number or percentage of unit
7 owners request the secretary to do so, the requesting members may directly notify all the unit
8 owners of the meeting. The notice of any meeting must state the time and place of the meeting
9 and the items on the agenda, including the general nature of any proposed amendment to the
10 declaration or bylaws, any budget changes, and any proposal to remove a director or officer.
11 Only matters described in a meeting notice may be considered at a special meeting.

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

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

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

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

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

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

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

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

39 (3) To discuss labor or personnel matters.

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

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

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

1 (g) During the period of declarant control, the executive board shall meet at least four
2 times a year. At least one of those meetings must be held at the condominium or at a place
3 convenient to the condominium. After termination of the period of declarant control, all
4 executive board meetings must be at the condominium or at a place convenient to the
5 condominium unless the unit owners amend the bylaws to vary the location of those meetings.

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

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

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

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

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

22 (k) After termination of any period when the declarant controls the association, unit
23 owners may amend the bylaws to vary the procedures for meetings described in subsection (j)
24 of this section.

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

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

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

37 **"§ 47C-3-116. Lien for assessments.**

38 (a) Any assessment levied against a unit remaining unpaid for a period of ~~30~~90 days or
39 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
40 the clerk of superior court of the county in which the unit is located in the manner provided
41 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
42 to ensure that its records contain the unit owner's current mailing address. No fewer than 15
43 days prior to filing the lien, the association shall mail a statement of the assessment amount due
44 and an offer to accept payments in installments as provided by subsection (e2) of this section
45 by first-class mail to the physical address of the unit and the unit owner's address of record with
46 the association, and, if different, to the address for the unit owner shown on the county tax
47 records and the county real property records for the unit. If the unit owner is a corporation, the
48 statement shall also be sent by first-class mail to the mailing address of the registered agent for
49 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other
50 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are
51 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)

1 of this section, the ~~association~~ association, acting through the executive board, may foreclose
2 the claim of lien in like manner as a mortgage on real estate ~~under power of sale~~ under Article
3 2A of Chapter 45 of the General Statutes. Statutes, if the assessment remains unpaid for 90 days
4 or more and the unit owner has failed to accept or comply with the proposed installment plan.
5 The association shall not foreclose the claim of lien unless the executive board votes to
6 commence the proceeding against the specific unit.

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

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

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

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

24 (1) Unpaid assessments.

25 (2) Late charges associated with the assessment.

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

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

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

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

33 (e) A judgment, decree, or order in any action brought under this section shall include
34 costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest
35 the collection of debt and enforcement of a lien after the expiration of the 15-day period
36 following notice as required in subsection (e1) of this section, then reasonable attorneys' fees
37 shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses
38 incurred. The collection of debt and enforcement of a lien remain uncontested as long as the
39 unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as
40 to the amount or validity of the debt and lien asserted or the association's right to collect the
41 debt and enforce the lien as provided in this section. The attorneys' fee limitation in this
42 subsection shall not apply to judicial foreclosures or proceedings authorized under subsection
43 (d) of this section or G.S. 47C-4-117.

44 (e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit
45 owner is notified in writing of the association's intent to seek payment of attorneys' fees and
46 court costs. The notice must be sent by first-class mail to the property address and, if different,
47 to the mailing address for the unit owner in the association's records. The association must
48 make reasonable and diligent efforts to ensure that its records contain the unit owner's current
49 mailing address. The notice shall set out the outstanding balance due as of the date of the notice
50 and state that the unit owner has 15 days from the mailing of the notice by first-class mail to
51 pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays

1 the outstanding balance within this period, then the unit owner shall have no obligation to pay
2 attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to
3 contact a representative of the association to discuss a payment schedule for the outstanding
4 balance as provided in subsection (e2) of this section and shall provide the name and telephone
5 number of the representative.

6 (e2) ~~The association, acting through its executive board and in the board's sole~~
7 ~~discretion, may agree to association shall allow~~ payment of an outstanding balance in
8 ~~installments, accordance with an installment plan. An installment plan under this subsection~~
9 ~~shall consist of equal periodic payments made over a reasonable time based on the amount of~~
10 ~~the outstanding balance. The accumulation of late charges associated with the outstanding~~
11 ~~balance shall cease when the unit owner agrees to make payments in accordance with an~~
12 ~~installment plan. Neither the association nor the unit owner is obligated to offer or accept any~~
13 ~~proposed installment schedule. The association shall mail a statement of the assessment amount~~
14 ~~due and an offer to accept payments under a proposed installment plan in accordance with~~
15 ~~subsection (a) of this section. If the unit owner accepts the proposed installment plan and~~
16 ~~subsequently fails to comply with the terms of the plan, the association may file a claim of lien~~
17 ~~in accordance with subsection (a) of this section when a scheduled payment remains unpaid for~~
18 ~~30 days or longer. Reasonable administrative fees and costs for accepting and processing~~
19 ~~installments may be added to the outstanding balance and included in an installment payment~~
20 ~~schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in~~
21 ~~an installment schedule only after the unit owner has been given notice as required in~~
22 ~~subsection (e1) of this section.~~

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

29 (g) A claim of lien shall set forth the name and address of the association, the name of
30 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
31 amount of the lien claimed. The first page of the claim of lien shall contain the following
32 statement in print that is in boldface, capital letters and no smaller than the largest print used
33 elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR
34 PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION
35 MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE
36 MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the
37 claim of lien on behalf of the association shall attach to and file with the claim of lien a
38 certificate of service attesting to the attempt of service on the record owner, which service shall
39 be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a
40 complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of
41 the association shall be deemed to have met the requirements of this subsection if service has
42 been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and
43 (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical
44 address of the unit and the unit owner's address of record with the association, and, if different,
45 to the address for the unit owner shown on the county tax records and the county real property
46 records for the unit. In the event that the owner of record is not a natural person, and actual
47 service is not achieved, the person signing the claim of lien on behalf of the association shall be
48 deemed to have met the requirements of this subsection if service has been attempted once
49 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule
50 4(j)(9)."

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

1 **"§ 47C-3-118. Association records.**

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

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

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

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

48 (c) ~~In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no~~
49 ~~financial payments, including payments made in the form of goods and services, may be made~~
50 ~~to any officer or member of the association's executive board or to a business, business~~
51 ~~associate, or relative of an officer or member of the executive board, except as expressly~~

1 provided for in the bylaws or in payments for services or expenses paid on behalf of the
2 association which are approved in advance by the executive board.

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

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

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

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

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

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

15 (3) Existing or potential litigation or mediation, arbitration, or administrative
16 proceedings.

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

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

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

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

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

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

28 (g) A right to copy records under this section includes the right to receive copies by
29 photocopying or other means, including copies through an electronic transmission if available
30 upon request by the unit 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 15.(b)** G.S. 47C-3-103 is amended by adding a new subsection to read:

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

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

43 "**§ 47C-3-120. Alternative dispute resolution allowed.**

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

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

1 **"§ 47C-4-101. Applicability; waiver.**

2 ...
3 (b) Neither a public offering statement nor a resale certificate need be prepared or
4 delivered in the case of a disposition which ~~is~~ is classified as one or more of the following:

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

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

15 **"§ 47C-4-109. Resales of units.**

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

- 22 (1) A statement disclosing the effect on the proposed disposition of any right of
23 first refusal or other restraint on the free alienability of the unit held by the
24 association.
25 (2) A statement setting forth the amount of the periodic common expense
26 assessment and any unpaid common expense or special assessment currently
27 due and payable from the owner who is selling the unit.
28 (3) A statement of any other fees payable by the owner who is selling the unit.
29 (4) A statement of any capital expenditures approved by the association for the
30 current and succeeding fiscal years.
31 (5) A statement of the amount of any reserves for capital expenditures and of
32 any portions of those reserves designated by the association for any specified
33 projects.
34 (6) The most recent regularly prepared balance sheet and income and expense
35 statement, if any, of the association.
36 (7) The current operating budget of the association.
37 (8) A statement of any unsatisfied judgments against the association and the
38 status of any pending suits in which the association is a defendant.
39 (9) A statement describing any insurance coverage provided for the benefit of
40 unit owners.
41 (10) A statement as to whether the executive board has given or received written
42 notice that any existing uses, occupancies, alterations, or improvements in or
43 to the unit or to the limited common elements assigned thereto violate any
44 provision of the declaration.
45 (11) A statement as to whether the executive board has received written notice
46 from a governmental agency of any violation of environmental, health, or
47 building codes with respect to the unit, the limited common elements
48 assigned thereto, or any other portion of the condominium which has not
49 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 that
5 may be received by a unit owner upon sale, condemnation, casualty loss to
6 the unit or the condominium, or termination of the condominium.

7 (14) In a cooperative, an accountant's statement, if any was prepared, as to the
8 deductibility for federal income tax purposes by the unit owner of real estate
9 taxes and interest paid by the association.

10 (15) A statement describing any pending sale or encumbrance of common
11 elements.

12 (16) A statement disclosing the effect on the unit to be conveyed of any
13 restrictions on the owner's right to use or occupy the unit or to lease the unit
14 to another person.

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

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

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

33 **PART III. GENERAL PROVISIONS**

34
35 **SECTION 20.** The Consumer Protection Division of the Department of Justice
36 shall provide general information to and receive complaints from the public regarding the
37 implementation of this act. The Department of Justice shall compile all complaints relating to
38 homeowners association into an annual report. The report shall be published on the
39 Department's web site.

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

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