

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 588*

Short Title: HOA/Uniform Procedure for Lien Enforcement. (Public)

Sponsors: Senator Vaughan.

Referred to: Judiciary I.

April 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO STABILIZE TITLES AND TO PROVIDE A UNIFORM PROCEDURE TO
3 ENFORCE CLAIMS OF LIEN SECURING SUMS DUE CONDOMINIUM AND
4 PLANNED COMMUNITY ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 47C-3-116 is repealed.

7 SECTION 2. Article 3 of Chapter 47C of the General Statutes is amended by
8 adding a new section to read as follows:

9 "**§ 47C-3-116.1. Lien for sums due association; enforcement.**

10 (a) Any assessment attributable to a unit which remains unpaid for a period of 30 days
11 or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office
12 of the clerk of superior court of the county in which the unit is located in the manner provided
13 herein. Once filed, a claim of lien secures all sums due the association through the date filed
14 and any sums due to the association thereafter. Unless the declaration provides otherwise, the
15 following are secured by a claim of lien once filed and are enforceable in the same manner as
16 unpaid assessments under this section: (i) reasonable attorneys' fees and costs, other fees,
17 charges, late charges, and charges imposed pursuant to G.S. 47C-3-102, 47C-3-107,
18 47C-3-107.1, and 47C-3-115 and (ii) any other sums due and payable to the association under
19 the declaration, the provisions of this Chapter, or as the result of an administrative, arbitration,
20 mediation, or judicial decision.

21 (b) The association must make reasonable and diligent efforts to ensure that its records
22 contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien,
23 the association shall mail a statement of the assessment amount due by first-class mail to the
24 physical address of the unit and the unit owner's address of record with the association and, if
25 different, to the address for the unit owner shown on the county tax records for the unit. If the
26 unit owner is a corporation or limited liability company, the statement shall also be sent by
27 first-class mail to the mailing address of the registered agent for the corporation or limited
28 liability company. Notwithstanding anything to the contrary in this Chapter, the association is
29 not required to mail a statement to an address known to be a vacant unit or to a unit for which
30 there is no United States postal address.

31 (c) A claim of lien shall set forth the name and address of the association, the name of
32 the record owner of the unit at the time the claim of lien is filed, a description of the unit, and
33 the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a
34 foreclosure as provided in subsection (f) of this section. The first page of the claim of lien shall
35 contain the following statement in print that is in boldface, capital letters, and no smaller than
36 the largest print used elsewhere in the document: "THIS DOCUMENT CONSTITUTES A



1 **LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE**
2 **HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST**
3 **YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH**
4 **CAROLINA LAW."** The person signing the claim of lien on behalf of the association shall
5 attach to and file with the claim of lien a certificate of service attesting to mailing of the claim
6 of lien by first-class mail to the record owner at the addresses specified in subsection (b) of this
7 section. If the unit owner is a corporation or limited liability company, the claim of lien shall
8 also be sent by first-class mail to the mailing address of the registered agent for the corporation
9 or limited liability company. Notwithstanding anything to the contrary in this Chapter, the
10 association is not required to mail a claim of lien to an address which is known to be a vacant
11 unit or to a unit for which there is no United States postal address. A lien for unpaid
12 assessments is extinguished unless proceedings to enforce the lien are instituted within three
13 years after the filing of the claim of lien in the office of the clerk of superior court.

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

20 (e) The association shall be entitled to recover the reasonable attorneys' fees and costs it
21 incurs in connection with the collection of any sums due. A unit owner may not be required to
22 pay attorneys' fees and court costs until the unit owner is notified in writing of the association's
23 intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by
24 first-class mail to the property address and, if different, to the mailing address for the unit
25 owner in the association's records. The association must make reasonable and diligent efforts to
26 ensure that its records contain the unit owner's current mailing address. Notwithstanding
27 anything to the contrary in this Chapter, there shall be no requirement that notice under this
28 subsection be mailed to an address which is known to be a vacant unit or a unit for which there
29 is no United States postal address. The notice shall set out the outstanding balance due as of the
30 date of the notice and state that the unit owner has 15 days from the mailing of the notice by
31 first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the
32 unit owner pays the outstanding balance within this period, then the unit owner shall have no
33 obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the unit owner
34 of the opportunity to contact a representative of the association to discuss a payment schedule
35 for the outstanding balance as provided in subsection (i) of this section and shall provide the
36 name and telephone number of the representative.

37 (f) Except as provided in subsection (h) of this section, the association may foreclose a
38 claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale as
39 provided in Article 2A of Chapter 45 of the General Statutes. The following provisions and
40 procedures shall be applicable to and complied with in every nonjudicial power of sale
41 foreclosure of a claim of lien, and these provisions and procedures shall control to the extent
42 they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the
43 General Statutes:

- 44 (1) The association shall be deemed to have a power of sale for purposes of
45 enforcement of its claim of lien.
- 46 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
47 the General Statutes shall mean the association, except as provided
48 otherwise in this Chapter.
- 49 (3) The term "security instrument" as used in Article 2A of Chapter 45 of the
50 General Statutes shall mean the claim of lien.

- 1 (4) The term "trustee" as used in Article 2A of Chapter 45 of the General
2 Statutes shall mean the person or entity appointed by the association under
3 subdivision (6) of this subsection.
- 4 (5) After the association has filed a claim of lien and prior to the
5 commencement of a nonjudicial foreclosure, the association shall give to the
6 unit owner notice of the association's intention to commence a non-judicial
7 foreclosure to enforce its claim of lien. The notice shall contain the
8 information required in G.S. 45-21.16(c)(5a).
- 9 (6) The association shall appoint a trustee to conduct the nonjudicial foreclosure
10 proceeding and sale. The appointment of the trustee shall be included in the
11 claim of lien or in a separate instrument filed in the office of the clerk of
12 court in the county in which the unit is located. It shall be the duty of the
13 clerk of court in whose office the claim of lien or separate appointment is
14 filed to record and index the appointment of the trustee in the names of the
15 unit owner, the trustee, and the association. The association, at its option,
16 may from time to time remove the trustee and appoint a successor trustee by
17 making a similar filing with the clerk of court, and the appointment shall be
18 indexed by the clerk of court as provided in this subdivision. Counsel for the
19 association may be appointed by the association to serve as the trustee and,
20 may serve in that capacity as long as the unit owner does not contest the
21 obligation to pay, the amount of any sums due the association, or the
22 validity, enforcement, or foreclosure of the claim of lien as provided in
23 subdivision (12) of this subsection.
- 24 (7) If a valid debt, default, and notice to those entitled to receive notice under
25 G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize
26 the sale of the property described in the claim of lien by the trustee.
- 27 (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,
28 the unit owner satisfies the debt secured by the claim of lien and pays all
29 expenses and costs incurred in filing and enforcing the association
30 assessment lien including, but not limited to, advertising costs, attorneys'
31 fees, and the trustee's commission, then the trustee shall dismiss the
32 foreclosure action and the association shall cancel the claim of lien of record
33 in accordance with the provisions of G.S. 45-36.3. The unit owner shall have
34 all rights granted under Article 4 of Chapter 45 of the General Statutes to
35 ensure the association's satisfaction of the claim of lien.
- 36 (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless
37 prohibited in the declaration or bylaws, the association may bid on the unit at
38 a foreclosure sale, directly or through an agent. If the association or its agent
39 is the high bidder at the sale, the trustee shall allow the association to pay the
40 costs and expenses of the sale and apply a credit against the sums due by the
41 unit owner to the association in lieu of paying the bid price in full.
- 42 (10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the
43 trustee shall have full power and authority to execute a deed for the unit to
44 the high bidder.
- 45 (11) The trustee shall be entitled to a commission for services rendered which
46 shall include fees, costs, and expenses reasonably incurred by the trustee in
47 connection with the foreclosure, whether or not a sale is held. Except as
48 provided in subdivision (12) of this subsection, the trustee's commission
49 shall be paid without regard to any limitations on compensation otherwise
50 provided by law including, without limitation, the provisions of
51 G.S. 45-21.15.

1 (12) If the unit owner does not contest the obligation to pay or the amount of any
2 sums due the association or the validity, enforcement, or foreclosure of the
3 claim of lien at any time after the expiration of the 15-day period following
4 notice as required in subsection (b) of this section and if no person or entity
5 other than counsel for the association serves as trustee in the foreclosure,
6 then attorneys' fees and the trustee's commission collectively charged to the
7 unit owner shall not exceed one thousand five hundred dollars (\$1,500), not
8 including costs or expenses incurred. The obligation to pay and the amount
9 of any sums due the association and the validity, enforcement, or foreclosure
10 of the claim of lien remain uncontested as long as the unit owner does not
11 refuse to pay any portion of the sums claimed due by the association and
12 does not dispute, contest, or raise any objection, defense, offset, or
13 counterclaim as to the amount or validity of the sums claimed due by the
14 association or the validity, enforcement, or foreclosure of the claim of lien.

15 (g) The provisions of subsection (f) of this section do not prohibit or prevent an
16 association from pursuing judicial foreclosure of a claim of lien, from taking other actions to
17 recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any
18 judgment, decree, or order in any judicial foreclosure or civil action shall include an award of
19 costs and reasonable attorneys' fees for the prevailing party, which shall not be subject to the
20 limitation provided in subdivision (f)(12) of this section.

21 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
22 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with
23 fines imposed by the association may only be enforced by judicial foreclosure as provided in
24 Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy,
25 charge, or attempt to collect a service, collection, consulting, or administration fee from any
26 unit owner unless the fee is expressly allowed in the declaration and any claim of lien securing
27 a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided
28 in Article 29A of Chapter 1 of the General Statutes.

29 (i) The association, acting through its executive board and in the board's sole
30 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
31 association nor the unit owner is obligated to offer or accept any proposed installment schedule.
32 Reasonable administrative fees and costs for accepting and processing installments may be
33 added to the outstanding balance and included in an installment payment schedule. Reasonable
34 attorneys' fees may be added to the outstanding balance and included in an installment schedule
35 after the unit owner has been given notice as required in subsection (e) of this section.
36 Attorneys' fees, costs, and expenses incurred in connection with any request that the association
37 agrees to accept payment of all or any part of sums due in installments shall not be included or
38 considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

39 (j) Where the holder of a first mortgage or first deed of trust of record or other
40 purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage or first
41 deed of trust, the purchaser and its heirs, successors, and assigns, shall not be liable for the
42 assessments against the unit which became due prior to the acquisition of title to the unit by the
43 purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all
44 the unit owners including the purchaser, its heirs, successors, and assigns. For purposes of this
45 subsection, the term "acquisition of title" means and refers to the recording of a deed conveying
46 title or the time at which the rights of the parties are fixed following the foreclosure of a
47 mortgage or deed of trust, whichever occurs first."

48 **SECTION 3.** Article 3 of Chapter 47C of the General Statutes is amended by
49 adding a new section to read as follows:

50 **"§ 47C-3-116.2. Validation of certain nonjudicial foreclosure proceedings and sales.**

1 All nonjudicial foreclosure proceedings commenced by an association before July 1, 2011,
2 and all sales and transfers of real property as part of those proceedings pursuant to the
3 provisions of this Chapter, Chapter 47A of the General Statutes, or provisions contained in the
4 declaration of the condominium, are declared to be valid, unless an action to set aside the
5 foreclosure is commenced on or before July 1, 2012, or within one year after the date of the
6 sale, whichever occurs last."

7 **SECTION 4.** G.S. 47F-3-116 is repealed.

8 **SECTION 5.** Article 3 of Chapter 47F of the General Statutes is amended by
9 adding a new section to read as follows:

10 **"§ 47F-3-116.1. Lien for sums due association; enforcement.**

11 (a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or
12 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of
13 the clerk of superior court of the county in which the lot is located in the manner provided
14 herein. Once filed, a claim of lien secures all sums due the association through the date filed
15 and any sums due the association thereafter. Unless the declaration provides otherwise, the
16 following are secured by a claim of lien once filed and are enforceable in the same manner as
17 unpaid assessments under this section: (i) reasonable attorneys' fees and costs, other fees,
18 charges, late charges, and charges imposed pursuant to G.S. 47F-3-102, 47F-3-107,
19 47F-3-107.1, and 47F-3-115 and (ii) any other sums due and payable to the association under
20 the declaration, the provisions of this Chapter, or as the result of an administrative, arbitration,
21 mediation, or judicial decision.

22 (b) The association must make reasonable and diligent efforts to ensure that its records
23 contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien,
24 the association shall mail a statement of the assessment amount due by first-class mail to the
25 physical address of the lot and the lot owner's address of record with the association and, if
26 different, to the address for the lot owner shown on the county tax records for the lot. If the lot
27 owner is a corporation or limited liability company, the statement shall also be sent by
28 first-class mail to the mailing address of the registered agent for the corporation or limited
29 liability company. Notwithstanding anything to the contrary in this Chapter, the association is
30 not required to mail a statement to an address known to be a vacant lot on which no dwelling
31 has been constructed or to a lot for which there is no United States postal address.

32 (c) A claim of lien shall set forth the name and address of the association, the name of
33 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
34 amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure
35 as provided in subsection (f) of this section. The first page of the claim of lien shall contain the
36 following statement in print that is in boldface, capital letters, and no smaller than the largest
37 print used elsewhere in the document: "**THIS DOCUMENT CONSTITUTES A LIEN**
38 **AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE**
39 **HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST**
40 **YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH**
41 **CAROLINA LAW."** The person signing the claim of lien on behalf of the association shall
42 attach to and file with the claim of lien a certificate of service attesting to mailing of the claim
43 of lien by first-class mail to the record owner at the addresses specified in subsection (b) of this
44 section. If the lot owner is a corporation or limited liability company, the claim of lien shall
45 also be sent by first-class mail to the mailing address of the registered agent for the corporation
46 or limited liability company. Notwithstanding anything to the contrary in this Chapter, the
47 association is not required to mail a claim of lien to an address which is known to be a vacant
48 lot on which no dwelling has been constructed or to a lot for which there is no United States
49 postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the
50 lien are instituted within three years after the filing of the claim of lien in the office of the clerk
51 of superior court.

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

7 (e) The association shall be entitled to recover the reasonable attorneys' fees and costs it
8 incurs in connection with the collection of any sums due. A lot owner may not be required to
9 pay attorneys' fees and court costs until the lot owner is notified in writing of the association's
10 intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by
11 first-class mail to the property address and, if different, to the mailing address for the lot owner
12 in the association's records. The association must make reasonable and diligent efforts to ensure
13 that its records contain the lot owner's current mailing address. Notwithstanding anything to the
14 contrary in this Chapter, there shall be no requirement that notice under this subsection be
15 mailed to an address which is known to be a vacant lot on which no dwelling has been
16 constructed or a lot for which there is no United States postal address. The notice shall set out
17 the outstanding balance due as of the date of the notice and state that the lot owner has 15 days
18 from the mailing of the notice by first-class mail to pay the outstanding balance without the
19 attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period,
20 then the lot owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice
21 shall also inform the lot owner of the opportunity to contact a representative of the association
22 to discuss a payment schedule for the outstanding balance as provided in subsection (i) of this
23 section and shall provide the name and telephone number of the representative.

24 (f) Except as provided in subsection (h) of this section, the association may foreclose a
25 claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale as
26 provided in Article 2A of Chapter 45 of the General Statutes. The following provisions and
27 procedures shall be applicable to and complied with in every nonjudicial power of sale
28 foreclosure of a claim of lien, and these provisions and procedures shall control to the extent
29 they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the
30 General Statutes:

- 31 (1) The association shall be deemed to have a power of sale for purposes of
32 enforcement of its claim of lien.
- 33 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
34 the General Statutes shall mean the association, except as provided
35 otherwise in this Chapter.
- 36 (3) The term "security instrument" as used in Article 2A of Chapter 45 of the
37 General Statutes shall mean the claim of lien.
- 38 (4) The term "trustee" as used in Article 2A of Chapter 45 of the General
39 Statutes shall mean the person or entity appointed by the association under
40 subdivision (6) of this subsection.
- 41 (5) After the association has filed a claim of lien and prior to the
42 commencement of a nonjudicial foreclosure, the association shall give to the
43 lot owner notice of the association's intention to commence a non-judicial
44 foreclosure to enforce its claim of lien. The notice shall contain the
45 information required in G.S. 45-21.16(c)(5a).
- 46 (6) The association shall appoint a trustee to conduct the nonjudicial foreclosure
47 proceeding and sale. The appointment of the trustee shall be included in the
48 claim of lien or in a separate instrument filed in the office of the clerk of
49 court in the county in which the planned community is located. It shall be
50 the duty of the clerk of court in whose office the claim of lien or separate
51 appointment is filed to record and index the appointment of the trustee in the

1 names of the lot owner, the trustee, and the association. The association, at
2 its option, may from time to time remove the trustee and appoint a successor
3 trustee by making a similar filing with the clerk of court, and the
4 appointment shall be indexed by the clerk of court as provided in this
5 subdivision. Counsel for the association may be appointed by the association
6 to serve as the trustee and may serve in that capacity as long as the lot owner
7 does not contest the obligation to pay, the amount of any sums due the
8 association, or the validity, enforcement, or foreclosure of the claim of lien
9 as provided in subdivision (12) of this subsection.

10 (7) If a valid debt, default, and notice to those entitled to receive notice under
11 G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize
12 the sale of the property described in the claim of lien by the trustee.

13 (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,
14 the lot owner satisfies the debt secured by the claim of lien and pays all
15 expenses and costs incurred in filing and enforcing the association
16 assessment lien including, but not limited to, advertising costs, attorneys'
17 fees, and the trustee's commission, then the trustee shall dismiss the
18 foreclosure action and the association shall cancel the claim of lien of record
19 in accordance with the provisions of G.S. 45-36.3. The lot owner shall have
20 all rights granted under Article 4 of Chapter 45 of the General Statutes to
21 ensure the association's satisfaction of the claim of lien.

22 (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless
23 prohibited in the declaration or bylaws, the association may bid on the lot at
24 a foreclosure sale, directly or through an agent. If the association or its agent
25 is the high bidder at the sale, the trustee shall allow the association to pay the
26 costs and expenses of the sale and apply a credit against the sums due by the
27 lot owner to the association in lieu of paying the bid price in full.

28 (10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the
29 trustee shall have full power and authority to execute a deed for the lot to the
30 high bidder.

31 (11) The trustee shall be entitled to a commission for services rendered which
32 shall include fees, costs, and expenses reasonably incurred by the trustee in
33 connection with the foreclosure, whether or not a sale is held. Except as
34 provided in subdivision (12) of this subsection, the trustee's commission
35 shall be paid without regard to any limitations on compensation otherwise
36 provided by law including, without limitation, the provisions of
37 G.S. 45-21.15.

38 (12) If the lot owner does not contest the obligation to pay, the amount of any
39 sums due the association, or the validity, enforcement, or foreclosure of the
40 claim of lien at any time after the expiration of the 15-day period following
41 notice as required in subsection (b) of this section, and if no person or entity
42 other than counsel for the association serves as trustee in the foreclosure,
43 then attorneys' fees and the trustee's commission collectively charged to the
44 lot owner shall not exceed one thousand five hundred dollars (\$1,500), not
45 including costs or expenses incurred. The obligation to pay and the amount
46 of any sums due the association and the validity, enforcement, or foreclosure
47 of the claim of lien remain uncontested as long as the lot owner does not
48 refuse to pay any portion of the sums claimed due by the association and
49 does not dispute, contest, or raise any objection, defense, offset, or
50 counterclaim as to the amount or validity of the sums claimed due by the
51 association or the validity, enforcement, or foreclosure of the claim of lien.

1 (g) The provisions of subsection (f) of this section do not prohibit or prevent an
2 association from pursuing judicial foreclosure of a claim of lien, from taking other actions to
3 recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any
4 judgment, decree, or order in any judicial foreclosure or civil action shall include an award of
5 costs and reasonable attorneys' fees for the prevailing party, which shall not be subject to the
6 limitation provided in subdivision (f)(12) of this section.

7 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
8 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with
9 fines imposed by the association may only be enforced by judicial foreclosure as provided in
10 Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy,
11 charge, or attempt to collect a service, collection, consulting, or administration fee from any lot
12 owner unless the fee is expressly allowed in the declaration and any claim of lien securing a
13 debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in
14 Article 29A of Chapter 1 of the General Statutes.

15 (i) The association, acting through its executive board and in the board's sole
16 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
17 association nor the lot owner is obligated to offer or accept any proposed installment schedule.
18 Reasonable administrative fees and costs for accepting and processing installments may be
19 added to the outstanding balance and included in an installment payment schedule. Reasonable
20 attorneys' fees may be added to the outstanding balance and included in an installment schedule
21 after the lot owner has been given notice as required in subsection (e) of this section. Attorneys'
22 fees, costs, and expenses incurred in connection with any request that the association agrees to
23 accept payment of all or any part of sums due in installments shall not be included or
24 considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

25 (j) Where the holder of a first mortgage or first deed of trust of record or other
26 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first
27 deed of trust, the purchaser and its heirs, successors, and assigns, shall not be liable for the
28 assessments against the lot which became due prior to the acquisition of title to the lot by the
29 purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all
30 the lot owners including the purchaser, its heirs, successors, and assigns. For purposes of this
31 subsection, the term "acquisition of title" means and refers to the recording of a deed conveying
32 title or the time at which the rights of the parties are fixed following the foreclosure of a
33 mortgage or deed of trust, whichever occurs first."

34 **SECTION 6.** Article 3 of Chapter 47F of the General Statutes is amended by
35 adding a new section to read as follows:

36 **"§ 47F-3-116.2. Validation of certain nonjudicial foreclosure proceedings and sales.**

37 All nonjudicial foreclosure proceedings commenced by an association before July 1, 2011,
38 and all sales and transfers of real property as part of those proceedings pursuant to the
39 provisions of this Chapter or provisions contained in the declaration of the planned community,
40 are declared to be valid, unless an action to set aside the foreclosure is commenced on or before
41 July 1, 2012, or within one year after the date of the sale, whichever occurs last."

42 **SECTION 7.** This act becomes effective July 1, 2011. Nothing contained in
43 Sections 3 or 6 of this act shall be construed as being applicable to or affecting any pending
44 litigation.