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SENATE BILL DRS35122-NK-35

Short Title: Changes to Liens and Foreclosures by HOAs.

(Public)

Sponsors: Senator Smith (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT NOTICE OF CLAIMS OF LIEN BE SERVED ON AN OWNER BY UNITED STATES POSTAL SERVICE CERTIFIED MAIL AND TO ELIMINATE ASSOCIATIONS' ABILITY TO FORECLOSE ON PROPERTIES FOR UNPAID ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-116 reads as rewritten:

"§ 47C-3-116. Lien for sums due the association; enforcement.

...

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the unit at the time the claim of lien is filed, a description of the unit, and the amount of the lien claimed. ~~A claim of lien may also appoint a trustee to conduct a foreclosure as provided in subsection (f) of this section. The claim of lien must sufficiently inform the owner that a lien is being placed on the property.~~ The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

~~"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."PROPERTY."~~

~~The claim of lien must be sent to the owner by certified mail. The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant unit or to a unit for which there is no United States postal address.~~



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

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

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

27 ~~(f) Except as provided in subsection (h) of this section, the association, acting through~~
28 ~~the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust~~
29 ~~on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,~~
30 ~~if the assessment remains unpaid for 90 days or more. The association shall not foreclose the~~
31 ~~claim of lien unless the executive board votes to commence the proceeding against the specific~~
32 ~~unit. The following provisions and procedures shall be applicable to and complied with in every~~
33 ~~nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall~~
34 ~~control to the extent they are inconsistent or in conflict with the provisions of Article 2A of~~
35 ~~Chapter 45 of the General Statutes:~~

- 36 ~~(1) The association shall be deemed to have a power of sale for purposes of~~
37 ~~enforcement of its claim of lien.~~
- 38 ~~(2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of~~
39 ~~the General Statutes shall mean the association, except as provided otherwise~~
40 ~~in this Chapter.~~
- 41 ~~(3) The term "security instrument" as used in Article 2A of Chapter 45 of the~~
42 ~~General Statutes shall mean the claim of lien.~~
- 43 ~~(4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes~~
44 ~~shall mean the person or entity appointed by the association under subdivision~~
45 ~~(6) of this subsection.~~
- 46 ~~(5) After the association has filed a claim of lien and prior to the commencement~~
47 ~~of a nonjudicial foreclosure, the association shall give to the unit owner notice~~
48 ~~of the association's intention to commence a nonjudicial foreclosure to enforce~~
49 ~~its claim of lien. The notice shall contain the information required in G.S.~~
50 ~~45-21.16(c)(5a).~~

- 1 (6) The association shall appoint a trustee to conduct the nonjudicial foreclosure
2 proceeding and sale. The appointment of the trustee shall be included in the
3 claim of lien or in a separate instrument filed with the office of the clerk of
4 court in the county in which the unit is located as an exhibit to the notice of
5 hearing. The association, at its option, may from time to time remove a trustee
6 previously appointed and appoint a successor trustee by filing a Substitution
7 of Trustee with the clerk of court in the foreclosure proceeding. Counsel for
8 the association may be appointed by the association to serve as the trustee and
9 may serve in that capacity as long as the unit owner does not contest the
10 obligation to pay the amount of any sums due the association, or the validity,
11 enforcement, or foreclosure of the claim of lien as provided in subdivision
12 (12) of this subsection. Any trustee appointed pursuant to this subsection shall
13 have the same fiduciary duties and obligations as a trustee in the foreclosure
14 of a deed of trust.
- 15 (7) If a valid debt, default, and notice to those entitled to receive notice under G.S.
16 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale
17 of the property described in the claim of lien by the trustee.
- 18 (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,
19 the unit owner satisfies the debt secured by the claim of lien and pays all
20 expenses and costs incurred in filing and enforcing the association assessment
21 lien, including, but not limited to, advertising costs, attorneys' fees, and the
22 trustee's commission, then the trustee shall dismiss the foreclosure action and
23 the association shall cancel the claim of lien of record in accordance with the
24 provisions of G.S. 45-36.3. The unit owner shall have all rights granted under
25 Article 4 of Chapter 45 of the General Statutes to ensure the association's
26 satisfaction of the claim of lien.
- 27 (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless
28 prohibited in the declaration or bylaws, the association may bid on the unit at
29 a foreclosure sale directly or through an agent. If the association or its agent
30 is the high bidder at the sale, the trustee shall allow the association to pay the
31 costs and expenses of the sale and apply a credit against the sums due by the
32 unit owner to the association in lieu of paying the bid price in full.
- 33 (10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the
34 trustee shall have full power and authority to execute a deed for the unit to the
35 high bidder.
- 36 (11) The trustee shall be entitled to a commission for services rendered which shall
37 include fees, costs, and expenses reasonably incurred by the trustee in
38 connection with the foreclosure whether or not a sale is held. Except as
39 provided in subdivision (12) of this subsection, the trustee's commission shall
40 be paid without regard to any limitations on compensation otherwise provided
41 by law, including, without limitation, the provisions of G.S. 45-21.15.
- 42 (12) If the unit owner does not contest the obligation to pay or the amount of any
43 sums due the association or the validity, enforcement, or foreclosure of the
44 claim of lien at any time after the expiration of the 15-day period following
45 notice as required in subsection (b) of this section, then attorneys' fees and the
46 trustee's commission collectively charged to the unit owner shall not exceed
47 one thousand two hundred dollars (\$1,200), not including costs or expenses
48 incurred. The obligation to pay and the amount of any sums due the
49 association and the validity, enforcement, or foreclosure of the claim of lien
50 remain uncontested as long as the unit owner does not dispute, contest, or raise
51 any objection, defense, offset, or counterclaim as to the amount or validity of

1 any portion of the sums claimed due by the association or the validity,
2 enforcement, or foreclosure of the claim of lien. Any judgment, decree, or
3 order in any action brought under this section shall include costs and
4 reasonable attorneys' fees for the prevailing party.

5 (13) Unit owners shall be deemed to have the rights and remedies available to
6 mortgagors under G.S. 45-21.34.

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

13 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
14 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines
15 imposed by the association may only be enforced by judicial foreclosure, as provided in Article
16 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or
17 attempt to collect a service, collection, consulting, or administration fee from any unit owner
18 unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt
19 consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article
20 29A of Chapter 1 of the General Statutes.

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

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

40 **SECTION 2.** G.S. 47F-3-116 reads as rewritten:

41 "**§ 47F-3-116. Lien for sums due the association; enforcement.**

42 ...

43 (c) A claim of lien shall set forth the name and address of the association, the name of
44 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
45 amount of the lien claimed. ~~A claim of lien may also appoint a trustee to conduct a foreclosure,~~
46 ~~as provided in subsection (f) of this section.~~ The claim of lien must sufficiently inform the owner
47 that a lien is being placed on the property. The first page of the claim of lien shall contain the
48 following statement in print that is in boldface, capital letters, and no smaller than the largest
49 print used elsewhere in the document:

50 "~~THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY AND IF THE~~
51 ~~LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH~~

~~FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."PROPERTY."~~

~~The claim of lien must be sent to the owner by certified mail. The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. owner. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.~~

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

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

~~(f) Except as provided in subsection (h) of this section, the association, acting through the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.~~

1 The following provisions and procedures shall be applicable to and complied with in every
2 nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall
3 control to the extent they are inconsistent or in conflict with the provisions of Article 2A of
4 Chapter 45 of the General Statutes:

- 5 (1) The association shall be deemed to have a power of sale for purposes of
6 enforcement of its claim of lien.
- 7 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
8 the General Statutes shall mean the association, except as provided otherwise
9 in this Chapter.
- 10 (3) The term "security instrument" as used in Article 2A of Chapter 45 of the
11 General Statutes shall mean the claim of lien.
- 12 (4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes
13 shall mean the person or entity appointed by the association under subdivision
14 (6) of this subsection.
- 15 (5) After the association has filed a claim of lien and prior to the commencement
16 of a nonjudicial foreclosure, the association shall give to the lot owner notice
17 of the association's intention to commence a nonjudicial foreclosure to enforce
18 its claim of lien. The notice shall contain the information required in G.S.
19 45-21.16(e)(5a).
- 20 (6) The association shall appoint a trustee to conduct the nonjudicial foreclosure
21 proceeding and sale. The appointment of the trustee shall be included in the
22 claim of lien or in a separate instrument filed with the clerk of court in the
23 county in which the planned community is located as an exhibit to the notice
24 of hearing. The association, at its option, may from time to time remove a
25 trustee previously appointed and appoint a successor trustee by filing a
26 Substitution of Trustee with the clerk of court in the foreclosure proceeding.
27 Counsel for the association may be appointed by the association to serve as
28 the trustee and may serve in that capacity as long as the lot owner does not
29 contest the obligation to pay or the amount of any sums due the association,
30 or the validity, enforcement, or foreclosure of the claim of lien, as provided in
31 subdivision (12) of this subsection. Any trustee appointed pursuant to this
32 subsection shall have the same fiduciary duties and obligations as a trustee in
33 the foreclosure of a deed of trust.
- 34 (7) If a valid debt, default, and notice to those entitled to receive notice under G.S.
35 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale
36 of the property described in the claim of lien by the trustee.
- 37 (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27,
38 the lot owner satisfies the debt secured by the claim of lien and pays all
39 expenses and costs incurred in filing and enforcing the association assessment
40 lien, including, but not limited to, advertising costs, attorneys' fees, and the
41 trustee's commission, then the trustee shall dismiss the foreclosure action and
42 the association shall cancel the claim of lien of record in accordance with the
43 provisions of G.S. 45-36.3. The lot owner shall have all rights granted under
44 Article 4 of Chapter 45 of the General Statutes to ensure the association's
45 satisfaction of the claim of lien.
- 46 (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless
47 prohibited in the declaration or bylaws, the association may bid on the lot at a
48 foreclosure sale directly or through an agent. If the association or its agent is
49 the high bidder at the sale, the trustee shall allow the association to pay the
50 costs and expenses of the sale and apply a credit against the sums due by the
51 lot owner to the association in lieu of paying the bid price in full.

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

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

10 (12) ~~If the lot owner does not contest the obligation to pay the amount of any sums~~
11 ~~due the association or the validity, enforcement, or foreclosure of the claim of~~
12 ~~lien at any time after the expiration of the 15-day period following notice as~~
13 ~~required in subsection (b) of this section, then attorneys' fees and the trustee's~~
14 ~~commission collectively charged to the lot owner shall not exceed one~~
15 ~~thousand two hundred dollars (\$1,200), not including costs or expenses~~
16 ~~incurred. The obligation to pay and the amount of any sums due the~~
17 ~~association and the validity, enforcement, or foreclosure of the claim of lien~~
18 ~~remain uncontested as long as the lot owner does not dispute, contest, or raise~~
19 ~~any objection, defense, offset, or counterclaim as to the amount or validity of~~
20 ~~any portion of the sums claimed due by the association or the validity,~~
21 ~~enforcement, or foreclosure of the claim of lien. Any judgment, decree, or~~
22 ~~order in any action brought under this section shall include costs and~~
23 ~~reasonable attorneys' fees for the prevailing party.~~

24 (13) ~~Lot owners shall be deemed to have the rights and remedies available to~~
25 ~~mortgagors under G.S. 45-21.34.~~

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

32 ~~(h) A claim of lien securing a debt consisting solely of fines imposed by the association,~~
33 ~~interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines~~
34 ~~imposed by the association may only be enforced by judicial foreclosure, as provided in Article~~
35 ~~29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or~~
36 ~~attempt to collect a service, collection, consulting, or administration fee from any lot owner~~
37 ~~unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt~~
38 ~~consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article~~
39 ~~29A of Chapter 1 of the General Statutes.~~

40 ~~(i) The association, acting through its executive board and in the board's sole discretion,~~
41 ~~may agree to allow payment of an outstanding balance in installments. Neither the association~~
42 ~~nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable~~
43 ~~administrative fees and costs for accepting and processing installments may be added to the~~
44 ~~outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees~~
45 ~~may be added to the outstanding balance and included in an installment schedule after the lot~~
46 ~~owner has been given notice, as required in subsection (e) of this section. Attorneys' fees incurred~~
47 ~~in connection with any request that the association agrees to accept payment of all or any part of~~
48 ~~sums due in installments shall not be included or considered in the calculation of fees chargeable~~
49 ~~under subdivision (f)(12) of this section.~~

50 ~~(j) Where the holder of a first mortgage or first deed of trust of record or other purchaser~~
51 ~~of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust,~~

1 the purchaser and its heirs, successors, and assigns shall not be liable for the assessments against
2 the lot which became due prior to the acquisition of title to the lot by the purchaser. The unpaid
3 assessments shall be deemed to be common expenses collectible from all the lot owners,
4 including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, the
5 term "acquisition of title" means and refers to the recording of a deed conveying title or the time
6 at which the rights of the parties are fixed following the foreclosure of a mortgage or deed of
7 trust, whichever occurs first."

8 **SECTION 3.** This act is effective when it becomes law and applies to all claims of
9 lien filed on or after that date.