

**Chapter 47F applicability to PMPOA Covenants:**

**PMPOA Attorney's Note:** The State Law provisions in blue below have been set out below for convenience. These laws take precedence over the original Pine Mountain Covenants & Restrictions, and *add to* the Covenants *unless* the Covenants expressly and clearly state otherwise. Because this is state law, no vote of the membership applies. These laws are current as of March 1, 2010. PMPOA Attorney's comments are in green.

**GENERAL STATUTES OF NORTH CAROLINA**

\*\*\* Statutes current through the 2009 Regular Session \*\*\*

\*\*\* Annotations current through January 1, 2010 \*\*\*

**CHAPTER 47F. NORTH CAROLINA PLANNED COMMUNITY ACT**

***1. N.C. Gen. Stat. § 47F-1-102 (2010)***

**§ 47F-1-102. Applicability**

(c) Notwithstanding the provisions of subsection (a) of this section, *G.S. 47F-3-102(1) through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999.* These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. *G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.*

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

2. **N.C. Gen. Stat. § 47F-1-103 (2010)**

**§ 47F-1-103. Definitions**

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

- (1) Reserved.
- (2) "Allocated interests" means the common expense liability and votes in the association allocated to each lot.
- (3) "Association" or "owners' association" means the association organized as allowed under North Carolina law, including *G.S. 47F-3-101*.
- (4) "Common elements" means any real estate within a planned community owned or leased by the association, other than a lot.
- (5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (6) "Common expense liability" means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.
- (7) "Condominium" means real estate, as defined and created under Chapter 47C [of the General Statutes].
- (8) "Cooperative" means real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.
- (9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person's or group's interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.
- (10) "Declaration" means any instruments, however denominated, that create a planned community and any amendments to those instruments.
- (11), (12) Reserved.
- (13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (14), (15) Reserved.
- (16) "Leasehold planned community" means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.
- (17) "Lessee" means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.

(18) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots.

(19) "Lot" means a physical portion of the planned community designated for separate ownership or occupancy by a lot owner.

(20) "Lot owner" means a declarant or other person who owns a lot, or a lessee of a lot in a leasehold planned community whose lease expires simultaneously with any lease the expiration or termination of which will remove the lot from the planned community, but does not include a person having an interest in a lot solely as security for an obligation.

(21) "Master association" means an organization described in *G.S. 47F-2-120*, whether or not it is also an association described in *G.S. 47F-3-101*.

(22) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(23) "Planned community" means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less than [than] 20 years in a lot, including renewal options.

(24) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

(25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(26) "Reasonable attorneys' fees" means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

(27) Reserved.

(28) "Special declarant rights" means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be

added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.

(29) Reserved.

**NOTES: NORTH CAROLINA COMMENT**

The definitions above apply to planned communities formed prior to January 1, 1999 to the extent necessary in construing or applying any of the other provisions made applicable to planned communities formed prior to that date.

3. *N.C. Gen. Stat. § 47F-3-107.1 (2010)*

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

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before the executive board or an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in *G.S. 47F-3-102(11)* and (12). Any adjudicatory panel appointed by the executive board shall be composed of members of the association who are not officers of the association or members of the executive board. **The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision.** If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$ 100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be shall be assessments secured by liens under *G.S. 47F-3-116*. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. **The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body.**

**NOTES: NORTH CAROLINA COMMENT**

1. This section is applicable to all planned communities based on the fact that the power to fine and suspend planned community privileges or services is granted to all planned communities under *G.S. 47F-3-102 (11)* and (12).
2. This section has been modified from the corresponding text in the North Carolina Condominium Act to clarify that the procedure for the imposition of fines and suspension of planned community privileges or services may be altered by specific provisions in the

declaration. It has also been modified to clarify the amount of and how often the same fine may be imposed for a recurring violation without further hearing.

## CASE NOTES

**PROCEDURAL DUE PROCESS.** --When a homeowner's association fined homeowners under *G.S. 47F-3-107.1* for doing construction that the association's architectural committee disapproved, the association did not violate the homeowners' rights to procedural due process because: (1) *G.S. 47F-3-107.1* provided that the homeowners were entitled to notice of the charge against them, an opportunity to be heard and to present evidence, and notice of the decision; and (2) the association provided the homeowners with these rights. *Reidy v. Whitehart Ass'n*, 185 N.C. App. 76, 648 S.E.2d 265 (2007).

### 4. *N.C. Gen. Stat. § 47F-3-102 (2010)*

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

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

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

**PMPOA attorney OMITTED (7) through (10) as not being applicable as of March 1<sup>st</sup>, 2010.**

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

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

- (13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
- (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
- (15) Assign its right to future income, including the right to receive common expense assessments;
- (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

**NOTES: NORTH CAROLINA COMMENT**

- 1. No specific dollar limitations have been placed on the association's right to impose reasonable late payment charges under subdivision (11). This is intended to afford the association the maximum reasonable latitude in this area. Limitations on the amount of fines levied under subdivision (12) are set forth in *G.S. 47F-3-107.1*. None of the powers granted to the association in this section are subject to any limitations set forth in Chapter 24 of the General Statutes.
- 2. In subdivision (15), the association is granted the power to assign its right to future income, including assessments regardless of whether or not its declaration expressly allows such assignments. This differs from the North Carolina Condominium Act and is intended to facilitate the acquisition of financing by the association, which is believed to be the primary goal of the provision.
- 3. Subdivisions (11) and (12) allow the association to suspend privileges and services under certain circumstances after notice and hearing in addition to other remedies provided for nonpayment of violations.

**4. Subdivisions (1) through (6) and (11) through (17) apply to planned communities formed prior to January 1, 1999.**

**5. N.C. Gen. Stat. § 47F-3-103 (2010)**

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

- (a) Except as provided in the declaration, in the bylaws, in subsection (b) of this section, or in other provisions of this Chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall discharge their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in *G.S. 55A-8-42*, and members shall act according to the standards for directors of a nonprofit corporation set forth in *G.S. 55A-8-30*.

(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47F-3-103(e)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the planned community, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.

(d) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board.

(e) Not later than the termination of any period of declarant control, the lot owners shall elect an executive board of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

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

## **6. N.C. Gen. Stat. § 47F-3-107 (2010)**

### **§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages**

(a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when

necessary to another lot owner access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

(c) If damage is inflicted on any lot by an agent of the association in the scope of the agent's activities as such agent, the association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.

**NOTES: NORTH CAROLINA COMMENT**

1. Subsection (a) allocates maintenance, repair and replacement responsibilities when those responsibilities are not otherwise allocated in the declaration. Responsibility for repair, maintenance or replacement of lots, common elements or improvements thereon may be allocated differently by express provisions in the declarations or in a duly authorized and adopted amendment to the declaration.

2. Subsection (b) differs from the corresponding section in the North Carolina Condominium Act in that lot owners are legally responsible for the damage they cause whether or not it is covered by insurance provided by the association.

**4. Subsections (a), (b) and (c) apply to planned communities formed prior to January 1, 1999.**

**7. N.C. Gen. Stat. § 47F-3-108 (2010)**

**§ 47F-3-108. Meetings**

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

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

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

**8. N.C. Gen. Stat. § 47F-3-115 (2010)**

**§ 47F-3-115. Assessments for common expenses**

(a) Except as otherwise provided in the declaration, until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments thereafter shall be made at least annually.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in the declaration. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year. For planned communities created prior to January 1, 1999, interest may be charged on any past-due common expense assessment or installment only if the declaration provides for interest charges, and where the declaration does not otherwise specify the interest rate, the rate may not exceed eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefitted; and

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the negligence or misconduct of any lot owner or occupant, the association may assess that expense exclusively against that lot owner or occupant's lot.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

**NOTES: NORTH CAROLINA COMMENT**

1. Subsection (e) has been modified to clarify that any expenses incurred by the association as the result of negligent *or* intentional acts or omissions by an owner *or* anyone who is present with the express or implied consent of the owner may be asserted by the association exclusively against the owner's lot.

**2. This section applies in its entirety to planned communities formed prior to January 1, 1999.**

**9. *N.C. Gen. Stat. § 47F-3-116 (2010)***

**§ 47F-3-116. Lien for assessments**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due 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 and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

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

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

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental

assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

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

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

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

(e1) 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 and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing 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 and court costs. 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 (e2) of this section and shall provide the name and telephone number of the representative.

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

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable

for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

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

#### **NOTES: NORTH CAROLINA COMMENT**

1. Subsection (a) differs from the corresponding section in the North Carolina Condominium Act in that it clarifies that the association's lien is created upon the filing of a claim of lien in the office of the clerk of superior court. Subsection (e) codifies and confirms existing public policy and prior case law by allowing the recovery of attorney's fees by the prevailing party. Subsection (g) has been added to clarify information which must be included in any claim of lien.

**2. This section applies in its entirety to planned communities formed prior to January 1, 1999.**

#### **10. N.C. Gen. Stat. § 47F-3-118 (2010)**

##### **§ 47F-3-118. Association records**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably

available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

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

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

## **11. *N.C. Gen. Stat. § 47F-3-120 (2010)***

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

Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration.

## **12. *N.C. Gen. Stat. § 47F-3-121 (2010)***

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

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

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

with or in a manner consistent with the patriotic customs set forth in *4 U.S.C. §§ 5-10*, as amended, governing the display and use of the flag of the United States unless:

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

1. Flag of the United States of America;
2. American flag;
3. United States flag; or
4. North Carolina flag.

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

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

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

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

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

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