

1 Article 3.

2 Management of Planned Community.

3 **§ 47F-3-101. Organization of owners' association.**

4 A lot owners' association shall be incorporated no later than the date the first lot in the  
5 planned community is conveyed. The membership of the association at all times shall consist  
6 exclusively of all the lot owners or, following termination of the planned community, of all  
7 persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created  
8 after the effective date of this Chapter shall be organized as a nonprofit corporation. (1998-199,  
9 s. 1.)

10  
11 **§ 47F-3-102. Powers of owners' association.**

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

- 14 (1) Adopt and amend bylaws and rules and regulations;
- 15 (2) Adopt and amend budgets for revenues, expenditures, and reserves and  
16 collect assessments for common expenses from lot owners;
- 17 (3) Hire and discharge managing agents and other employees, agents, and  
18 independent contractors;
- 19 (4) Institute, defend, or intervene in litigation or administrative proceedings on  
20 matters affecting the planned community;
- 21 (5) Make contracts and incur liabilities;
- 22 (6) Regulate the use, maintenance, repair, replacement, and modification of  
23 common elements;
- 24 (7) Cause additional improvements to be made as a part of the common  
25 elements;
- 26 (8) Acquire, hold, encumber, and convey in its own name any right, title, or  
27 interest to real or personal property, provided that common elements may be  
28 conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;
- 29 (9) Grant easements, leases, licenses, and concessions through or over the  
30 common elements;
- 31 (10) Impose and receive any payments, fees, or charges for the use, rental, or  
32 operation of the common elements other than the limited common elements  
33 and for services provided to lot owners;
- 34 (11) Impose reasonable charges for late payment of assessments, not to exceed  
35 the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any  
36 assessment installment unpaid and, after notice and an opportunity to be  
37 heard, suspend privileges or services provided by the association (except  
38 rights of access to lots) during any period that assessments or other amounts  
39 due and owing to the association remain unpaid for a period of 30 days or  
40 longer;
- 41 (12) After notice and an opportunity to be heard, impose reasonable fines or  
42 suspend privileges or services provided by the association (except rights of  
43 access to lots) for reasonable periods for violations of the declaration,  
44 bylaws, and rules and regulations of the association;
- 45 (13) Impose reasonable charges in connection with the preparation and  
46 recordation of documents, including, without limitation, amendments to the  
47 declaration or statements of unpaid assessments;
- 48 (14) Provide for the indemnification of and maintain liability insurance for its  
49 officers, executive board, directors, employees, and agents;
- 50 (15) Assign its right to future income, including the right to receive common  
51 expense assessments;

- 1 (16) Exercise all other powers that may be exercised in this State by legal entities  
2 of the same type as the association; and  
3 (17) Exercise any other powers necessary and proper for the governance and  
4 operation of the association. (1998-199, s. 1; 2004-109, s. 4; 2005-422, s. 1.)  
5

6 **§ 47F-3-103. Executive board members and officers.**

7 (a) Except as provided in the declaration, in the bylaws, in subsection (b) of this  
8 section, or in other provisions of this Chapter, the executive board may act in all instances on  
9 behalf of the association. In the performance of their duties, officers and members of the  
10 executive board shall discharge their duties in good faith. Officers shall act according to the  
11 standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall  
12 act according to the standards for directors of a nonprofit corporation set forth in G.S.  
13 55A-8-30.

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

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

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

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

41 (f) The association shall publish the names and addresses of all officers and board  
42 members of the association within 30 days of their election. (1998-199, s. 1; 2005-422, ss. 2,  
43 3.)  
44

45 **§ 47F-3-104. Transfer of special declarant rights.**

46 Except for transfer of declarant rights pursuant to foreclosure, no special declarant right  
47 (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer  
48 recorded in every county in which any portion of the planned community is located. The  
49 instrument is not effective unless executed by the transferee. (1998-199, s. 1.)  
50

51 **§ 47F-3-105. Termination of contracts and leases of declarant.**

1 If entered into before the executive board elected by the lot owners pursuant to G.S.  
2 47F-3-103(e) takes office, any contract or lease affecting or related to the planned community  
3 that is not bona fide or was unconscionable to the lot owners at the time entered into under the  
4 circumstances then prevailing, may be terminated without penalty by the association at any  
5 time after the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes  
6 office upon not less than 90 days' notice to the other party. (1998-199, s. 1.)  
7

8 **§ 47F-3-106. Bylaws.**

9 (a) The bylaws of the association shall provide for:

- 10 (1) The number of members of the executive board and the titles of the officers  
11 of the association;
- 12 (2) Election by the executive board of officers of the association;
- 13 (3) The qualifications, powers and duties, terms of office, and manner of  
14 electing and removing executive board members and officers and filling  
15 vacancies;
- 16 (4) Which, if any, of its powers the executive board or officers may delegate to  
17 other persons or to a managing agent;
- 18 (5) Which of its officers may prepare, execute, certify, and record amendments  
19 to the declaration on behalf of the association; and
- 20 (6) The method of amending the bylaws.

21 (b) The bylaws may provide for any other matters the association deems necessary and  
22 appropriate. (1998-199, s. 1.)  
23

24 **§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.**

25 (a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b)  
26 of this section, the association is responsible for causing the common elements to be  
27 maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to  
28 recover the costs of such maintenance, repair, or replacement except that the costs of  
29 maintenance, repair, or replacement of a limited common element shall be assessed as provided  
30 in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is  
31 responsible for the maintenance and repair of his lot and any improvements thereon. Each lot  
32 owner shall afford to the association and when necessary to another lot owner access through  
33 the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement  
34 activity.

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

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

42 (d) When the claim under subsection (b) or (c) of this section is less than or equal to the  
43 jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may  
44 request that a hearing be held before an adjudicatory panel appointed by the executive board to  
45 determine if a lot owner is responsible for damages to any common element or the association  
46 is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory  
47 panel to hear such matters, hearings under this section shall be held before the executive board.  
48 Such panel shall accord to the party charged with causing damages notice of the charge,  
49 opportunity to be heard and to present evidence, and notice of the decision. This panel may  
50 assess liability for each damage incident against each lot owner charged or against the  
51 association not in excess of the jurisdictional amount established for small claims by G.S.

1 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional  
2 amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the  
3 association shall be determined as otherwise provided by law. Liabilities of lot owners  
4 determined by adjudicatory hearing or as otherwise provided by law shall be assessments  
5 secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory  
6 hearing or as otherwise provided by law may be offset by the lot owner against sums owing to  
7 the association and if so offset, shall reduce the amount of any lien of the association against  
8 the lot at issue.

9 (e) The association shall not be liable for maintenance, repair, and all other expenses in  
10 connection with any real estate which has not been incorporated into the planned community.  
11 (1998-199, s. 1.)  
12

13 **§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or**  
14 **services.**

15 Unless a specific procedure for the imposition of fines or suspension of planned community  
16 privileges or services is provided for in the declaration, a hearing shall be held before the  
17 executive board or an adjudicatory panel appointed by the executive board to determine if any  
18 lot owner should be fined or if planned community privileges or services should be suspended  
19 pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any  
20 adjudicatory panel appointed by the executive board shall be composed of members of the  
21 association who are not officers of the association or members of the executive board. The lot  
22 owner charged shall be given notice of the charge, opportunity to be heard and to present  
23 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to  
24 exceed one hundred dollars (\$100.00) may be imposed for the violation and without further  
25 hearing, for each day more than five days after the decision that the violation occurs. Such fines  
26 shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of  
27 planned community privileges or services should be imposed, the suspension may be continued  
28 without further hearing until the violation or delinquency is cured. The lot owner may appeal  
29 the decision of an adjudicatory panel to the full executive board by delivering written notice of  
30 appeal to the executive board within 15 days after the date of the decision. The executive board  
31 may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27;  
32 1998-199, s. 1; 2005-422, s. 4.)  
33

34 **§ 47F-3-108. Meetings.**

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

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

1 (c) Except as otherwise provided in the bylaws, meetings of the association and the  
2 executive board shall be conducted in accordance with the most recent edition of Robert's Rules  
3 of Order Newly Revised. (1998-199, s. 1; 2004-109, s. 6; 2005-422, s. 5.)  
4

5 **§ 47F-3-109. Quorums.**

6 (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting  
7 of the association if persons entitled to cast ten percent (10%) of the votes which may be cast  
8 for election of the executive board are present in person or by proxy at the beginning of the  
9 meeting.

10 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present  
11 throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of  
12 the votes on that board are present at the beginning of the meeting.

13 (c) In the event business cannot be conducted at any meeting because a quorum is not  
14 present, that meeting may be adjourned to a later date by the affirmative vote of a majority of  
15 those present in person or by proxy. Notwithstanding any provision to the contrary in the  
16 declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the  
17 quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision  
18 shall continue to reduce the quorum by fifty percent (50%) from that required at the previous  
19 meeting, as previously reduced, until such time as a quorum is present and business can be  
20 conducted. (1998-199, s. 1.)  
21

22 **§ 47F-3-110. Voting; proxies.**

23 (a) If only one of the multiple owners of a lot is present at a meeting of the association,  
24 the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of  
25 the multiple owners are present, the votes allocated to that lot may be cast only in accordance  
26 with the agreement of a majority in interest of the multiple owners, unless the declaration or  
27 bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one  
28 of the multiple owners casts the votes allocated to that lot without protest being made promptly  
29 to the person presiding over the meeting by any of the other owners of the lot.

30 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot  
31 owner. If a lot is owned by more than one person, each owner of the lot may vote or register  
32 protest to the casting of votes by the other owners of the lot through a duly executed proxy. A  
33 lot owner may not revoke a proxy given pursuant to this section except by actual notice of  
34 revocation to the person presiding over a meeting of the association. A proxy is void if it is not  
35 dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

36 (c) If the declaration requires that votes on specified matters affecting the planned  
37 community be cast by lessees rather than lot owners of leased lots, (i) the provisions of  
38 subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot owners  
39 who have leased their lots to other persons may not cast votes on those specified matters; and  
40 (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting  
41 those matters as if they were lot owners. Lot owners shall also be given notice, in the manner  
42 provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

43 (d) No votes allocated to a lot owned by the association may be cast.

44 (e) The declaration may provide that on specified issues only a defined subgroup of lot  
45 owners may vote provided:

46 (1) The issue being voted is of special interest solely to the members of the  
47 subgroup; and

48 (2) All except de minimis cost that will be incurred based on the vote taken will  
49 be assessed solely against those lot owners entitled to vote.

50 (f) For purposes of subdivision (e)(1) above, an issue to be voted on is not a special  
51 interest solely to a subgroup if it substantially affects the overall appearance of the planned

1 community or substantially affects living conditions of lot owners not included in the voting  
2 subgroup. (1998-199, s. 1.)

3  
4 **§ 47F-3-111. Tort and contract liability.**

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

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

10 (c) Any statute of limitation affecting the association's right of action under this section  
11 is tolled until the period of declarant control terminates. A lot owner is not precluded from  
12 bringing an action contemplated by this section because the person is a lot owner or a member  
13 of the association. (1998-199, s. 1.)

14  
15 **§ 47F-3-112. Conveyance or encumbrance of common elements.**

16 (a) Portions of the common elements may be conveyed or subjected to a security  
17 interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in  
18 the association, or any larger percentage the declaration specifies, agree in writing to that  
19 action; provided that all the owners of lots to which any limited common element is allocated  
20 shall agree in order to convey that limited common element or subject it to a security interest.  
21 The declaration may specify a smaller percentage only if all the lots are restricted exclusively  
22 to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall  
23 be as provided by agreement between the lot owners to which it is allocated and the  
24 association. Proceeds of the sale or financing of a common element (other than a limited  
25 common element) shall be an asset of the association.

26 (b) The association, on behalf of the lot owners, may contract to convey common  
27 elements or subject them to a security interest, but the contract is not enforceable against the  
28 association until approved pursuant to subsection (a) of this section. Thereafter, the association  
29 has all powers necessary and appropriate to effect the conveyance or encumbrance, free and  
30 clear of any interest of any lot owner or the association in or to the common element conveyed  
31 or encumbered, including the power to execute deeds or other instruments.

32 (c) Any purported conveyance, encumbrance, or other voluntary transfer of common  
33 elements, unless made pursuant to this section is void.

34 (d) No conveyance or encumbrance of common elements pursuant to this section may  
35 deprive any lot of its rights of access and support. (1998-199, s. 1.)

36  
37 **§ 47F-3-113. Insurance.**

38 (a) Commencing not later than the time of the first conveyance of a lot to a person other  
39 than a declarant, the association shall maintain, to the extent reasonably available:

40 (1) Property insurance on the common elements insuring against all risks of  
41 direct physical loss commonly insured against including fire and extended  
42 coverage perils. The total amount of insurance after application of any  
43 deductibles shall be not less than eighty percent (80%) of the replacement  
44 cost of the insured property at the time the insurance is purchased and at  
45 each renewal date, exclusive of land, excavations, foundations, and other  
46 items normally excluded from property policies; and

47 (2) Liability insurance in reasonable amounts, covering all occurrences  
48 commonly insured against for death, bodily injury, and property damage  
49 arising out of or in connection with the use, ownership, or maintenance of  
50 the common elements.

1 (b) If the insurance described in subsection (a) of this section is not reasonably  
2 available, the association promptly shall cause notice of that fact to be hand-delivered or sent  
3 prepaid by United States mail to all lot owners. The declaration may require the association to  
4 carry any other insurance, and the association in any event may carry any other insurance it  
5 deems appropriate to protect the association or the lot owners.

6 (c) Insurance policies carried pursuant to subsection (a) of this section shall provide  
7 that:

- 8 (1) Each lot owner is an insured person under the policy to the extent of the lot  
9 owner's insurable interest;
- 10 (2) The insurer waives its right to subrogation under the policy against any lot  
11 owner or member of the lot owner's household;
- 12 (3) No act or omission by any lot owner, unless acting within the scope of the  
13 owner's authority on behalf of the association, will preclude recovery under  
14 the policy; and
- 15 (4) If, at the time of a loss under the policy, there is other insurance in the name  
16 of a lot owner covering the same risk covered by the policy, the association's  
17 policy provides primary insurance.

18 (d) Any loss covered by the property policy under subdivision (a)(1) of this section  
19 shall be adjusted with the association, but the insurance proceeds for that loss are payable to  
20 any insurance trustee designated for that purpose, or otherwise to the association, and not to  
21 any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association  
22 shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may  
23 appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be  
24 disbursed first for the repair or restoration of the damaged property, and lot owners and  
25 lienholders are not entitled to receive payment of any portion of the proceeds unless there is a  
26 surplus of proceeds after the property has been completely repaired or restored, or the planned  
27 community is terminated.

28 (e) An insurance policy issued to the association does not prevent a lot owner from  
29 obtaining insurance for the lot owner's own benefit.

30 (f) An insurer that has issued an insurance policy under this section shall issue  
31 certificates or memoranda of insurance to the association and, upon written request, to any lot  
32 owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not  
33 cancel or refuse to renew it until 30 days after notice of the proposed cancellation or  
34 nonrenewal has been mailed to the association, each lot owner, and each mortgagee or  
35 beneficiary under a deed of trust to whom certificates or memoranda of insurance have been  
36 issued at their respective last known addresses.

37 (g) Any portion of the planned community for which insurance is required under  
38 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced  
39 promptly by the association unless (i) the planned community is terminated, (ii) repair or  
40 replacement would be illegal under any State or local health or safety statute or ordinance, or  
41 (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one  
42 hundred percent (100%) approval of owners assigned to the limited common elements not to be  
43 rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a  
44 common expense. If any portion of the planned community is not repaired or replaced, (i) the  
45 insurance proceeds attributable to the damaged common elements shall be used to restore the  
46 damaged area to a condition compatible with the remainder of the planned community, (ii) the  
47 insurance proceeds attributable to limited common elements which are not rebuilt shall be  
48 distributed to the owners of the lots to which those limited common elements were allocated, or  
49 to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be  
50 distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the  
51 common expense liabilities of all the lots. Notwithstanding the provisions of this subsection,

1 G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance  
2 proceeds if the planned community is terminated.

3 (h) The provisions of this section may be varied or waived in the case of a planned  
4 community all of whose lots are restricted to nonresidential use. (1998-199, s. 1.)  
5

6 **§ 47F-3-114. Surplus funds.**

7 Unless otherwise provided in the declaration, any surplus funds of the association  
8 remaining after payment of or provision for common expenses, the funding of a reasonable  
9 operating expense surplus, and any prepayment of reserves shall be paid to the lot owners in  
10 proportion to their common expense liabilities or credited to them to reduce their future  
11 common expense assessments. (1998-199, s. 1.)  
12

13 **§ 47F-3-115. Assessments for common expenses.**

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

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

26 (c) To the extent required by the declaration:

- 27 (1) Any common expense associated with the maintenance, repair, or  
28 replacement of a limited common element shall be assessed against the lots  
29 to which that limited common element is assigned, equally, or in any other  
30 proportion that the declaration provides;  
31 (2) Any common expense or portion thereof benefiting fewer than all of the lots  
32 shall be assessed exclusively against the lots benefitted; and  
33 (3) The costs of insurance shall be assessed in proportion to risk and the costs of  
34 utilities shall be assessed in proportion to usage.

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

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

41 (f) If common expense liabilities are reallocated, common expense assessments and  
42 any installment thereof not yet due shall be recalculated in accordance with the reallocated  
43 common expense liabilities. (1998-199, s. 1.)  
44

45 **§ 47F-3-116. Lien for assessments.**

46 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days or  
47 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of  
48 the clerk of superior court of the county in which the lot is located in the manner provided  
49 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts  
50 to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days  
51 prior to filing the lien, the association shall mail a statement of the assessment amount due by

1 first-class mail to the physical address of the lot and the lot owner's address of record with the  
2 association, and, if different, to the address for the lot owner shown on the county tax records  
3 and the county real property records for the lot. If the lot owner is a corporation, the statement  
4 shall also be sent by first-class mail to the mailing address of the registered agent for the  
5 corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other  
6 charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are  
7 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)  
8 of this section, the association, acting through the executive board, may foreclose the claim of  
9 lien in like manner as a mortgage on real estate under power of sale or under Article 2A of  
10 Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The  
11 association shall not foreclose the claim of lien unless the executive board votes to commence  
12 the proceeding against the specific lot.

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

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

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

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

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

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

45 (e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot  
46 owner is notified in writing of the association's intent to seek payment of attorneys' fees and  
47 court costs. The notice must be sent by first-class mail to the property address and, if different,  
48 to the mailing address for the lot owner in the association's records. The association must make  
49 reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing  
50 address. The notice shall set out the outstanding balance due as of the date of the notice and  
51 state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the

1 outstanding balance without the attorneys' fees and court costs. If the lot owner pays the  
2 outstanding balance within this period, then the lot owner shall have no obligation to pay  
3 attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to  
4 contact a representative of the association to discuss a payment schedule for the outstanding  
5 balance as provided in subsection (e2) of this section and shall provide the name and telephone  
6 number of the representative.

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

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

20 (g) A claim of lien shall set forth the name and address of the association, the name of  
21 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the  
22 amount of the lien claimed. The first page of the claim of lien shall contain the following  
23 statement in print that is in boldface, capital letters and no smaller than the largest print used  
24 elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR  
25 PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION  
26 MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE  
27 MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW." The person signing the  
28 claim of lien on behalf of the association shall attach to and file with the claim of lien a  
29 certificate of service attesting to the attempt of service on the record owner, which service shall  
30 be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a  
31 complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of  
32 the association shall be deemed to have met the requirements of this subsection if service has  
33 been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and  
34 (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical  
35 address of the lot and the lot owner's address of record with the association, and, if different, to  
36 the address for the lot owner shown on the county tax records and the county real property  
37 records for the lot. In the event that the owner of record is not a natural person, and actual  
38 service is not achieved, the person signing the claim of lien on behalf of the association shall be  
39 deemed to have met the requirements of this subsection if service has been attempted once  
40 pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule  
41 4(j)(9). (1998-199, s. 1; 2005-422, s. 6; 2009-515, s. 1; 2011-362, s. 1.)  
42

43 **§ 47F-3-117. Reserved for future codification purposes.**

44  
45 **§ 47F-3-118. Association records.**

46 (a) The association shall keep financial records sufficiently detailed to enable the  
47 association to comply with this Chapter. All financial and other records, including records of  
48 meetings of the association and executive board, shall be made reasonably available for  
49 examination by any lot owner and the lot owner's authorized agents as required in the bylaws  
50 and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be  
51 maintained, the association shall keep accurate records of all cash receipts and expenditures and

1 all assets and liabilities. In addition to any specific information that is required by the bylaws to  
2 be assembled and reported to the lot owners at specified times, the association shall make an  
3 annual income and expense statement and balance sheet available to all lot owners at no charge  
4 and within 75 days after the close of the fiscal year to which the information relates.  
5 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's  
6 books and records for the current or immediately preceding fiscal year may be required by a  
7 vote of the majority of the executive board or by the affirmative vote of a majority of the lot  
8 owners present and voting in person or by proxy at any annual meeting or any special meeting  
9 duly called for that purpose.

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

14 (c) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no  
15 financial payments, including payments made in the form of goods and services, may be made  
16 to any officer or member of the association's executive board or to a business, business  
17 associate, or relative of an officer or member of the executive board, except as expressly  
18 provided for in the bylaws or in payments for services or expenses paid on behalf of the  
19 association which are approved in advance by the executive board. (1998-199, s. 1; 2005-422,  
20 s. 7.)

#### 21 22 **§ 47F-3-119. Association as trustee.**

23 With respect to a third person dealing with the association in the association's capacity as a  
24 trustee under G.S. 47F-2-118 following termination or G.S. 47F-3-113 for insurance proceeds,  
25 the existence of trust powers and their proper exercise by the association may be assumed  
26 without inquiry. A third person is not bound to inquire whether the association has power to act  
27 as trustee or is properly exercising trust powers, and a third person, without actual knowledge  
28 that the association is exceeding or improperly exercising its powers, is fully protected in  
29 dealing with the association as if it possessed and properly exercised the powers it purports to  
30 exercise. A third person is not bound to assure the proper application of trust assets paid or  
31 delivered to the association in its capacity as trustee. (1998-199, s. 1.)

#### 32 33 **§ 47F-3-120. Declaration limits on attorneys' fees.**

34 Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of  
35 incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may  
36 award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed  
37 in the declaration. (1998-199, s. 1.)

#### 38 39 **§ 47F-3-121. American and State flags and political sign displays.**

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

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

- 47 a. For restrictions registered prior to October 1, 2005, the restriction  
48 specifically uses the following terms:  
49 1. Flag of the United States of America;  
50 2. American flag;  
51 3. United States flag; or

1 4. North Carolina flag.

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

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

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

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

28 Even when display of a political sign is permitted under this subdivision, an  
29 association (i) may prohibit the display of political signs earlier than 45 days  
30 before the day of the election and later than seven days after an election day,  
31 and (ii) may regulate the size and number of political signs that may be  
32 placed on a member's property if the association's regulation is no more  
33 restrictive than any applicable city, town, or county ordinance that regulates  
34 the size and number of political signs on residential property. If the local  
35 government in which the property is located does not regulate the size and  
36 number of political signs on residential property, the association shall permit  
37 at least one political sign with the maximum dimensions of 24 inches by 24  
38 inches on a member's property. For the purposes of this subdivision,  
39 "political sign" means a sign that attempts to influence the outcome of an  
40 election, including supporting or opposing an issue on the election ballot.  
41 This subdivision shall apply to owners of property who display political  
42 signs on property owned exclusively by them and does not apply to common  
43 areas, easements, rights-of-way, or other areas owned by others. (2005-422,  
44 s. 8; 2006-226, s. 15(b).)

45  
46 **§ 47F-3-122. Irrigation of landscaping.**

47 Notwithstanding any provision in any declaration of covenants, no requirement to irrigate  
48 landscaping shall be construed to:

- 49 (1) Require the irrigation of landscaping, during any period in which the U.S.  
50 Drought Monitor, as defined in G.S. 143-350, or the Secretary of  
51 Environment and Natural Resources has designated an area in which the

1 association is located as an area of severe, extreme, or exceptional drought  
2 and the Governor, a State agency, or unit of local government has imposed  
3 water conservation measures applicable to the area unless:

4 a. For declarations of covenants registered prior to October 1, 2008, the  
5 covenant specifically requires the irrigation of landscaping  
6 notwithstanding water conservation measures imposed by the  
7 Governor, a State agency, or unit of local government. The  
8 association may not fine or otherwise penalize an owner of land for  
9 violation of an irrigation requirement during a period of a drought as  
10 designated under this subdivision, unless the covenant specifically  
11 authorizes fines or other penalties.

12 b. For covenants registered on or after October 1, 2008, the covenant  
13 must specifically state that any requirement to irrigate landscaping is  
14 suspended to the extent the requirement would otherwise be  
15 prohibited during any period in which the Governor, a State agency,  
16 or unit of local government has imposed water conservation  
17 measures. The association may not fine or otherwise penalize an  
18 owner of land for violation of an irrigation requirement during a  
19 drought designated under this subdivision, unless the covenant  
20 authorizes the fines or other penalties. This authorization must be  
21 written on the first page of the covenant in print that is in boldface  
22 type, capital letters, and no smaller than the largest print used  
23 elsewhere in the declarations of covenants.

24 (2) For purposes of this section, the term "landscaping" includes lawns, trees,  
25 shrubbery, and other ornamental or decorative plants. (2008-143, s. 19(b).)