

### Article 3.

#### Management of the Condominium.

##### **§ 47C-3-101. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2006-226, s. 4.)

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

(a) Unless the declaration expressly provides to the contrary, the association, even if unincorporated, 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 unit owners;
- (3) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
- (11) Impose 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, and levy reasonable fines not to exceed one hundred dollars (\$100.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association.
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;

- (13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (14) Assign its right to future income, including the right to receive common expense assessments.
- (15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
- (16) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2004-109, s. 2; 2005-422, ss. 10, 11.)

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

(a) Except as provided in the declaration, the bylaws, or subsection (b) or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the unit owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) The executive board may not act on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-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. 47C-3-103(e) and (f)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. 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 unit owners or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive

board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to special rights) to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to special declarant rights) to unit owners other than a declarant, not less than thirty-three percent (33%) of the members of the executive board shall be elected by unit owners other than the declarant.

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

(g) The association shall publish the names and addresses of all officers and board members of the association within 30 days of the election. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, ss. 12, 13.)

#### **§ 47C-3-104. Transfer of special declarant rights.**

(a) No special declarant right (G.S. 47C-1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

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

- (1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.
- (2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.
- (3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant, or real estate in a condominium subject to development rights, or real estate subject to development rights for a condominium, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded with the register of deeds in every county where any portion of the condominium is located, succeeds to all special declarant rights (G.S. 47C-1-103(23)) related to the property held by that declarant and requested by the person acquiring title. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection shall not be required to contain specific reference to an assignment of special declarant rights but shall be deemed to include the special declarant rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all units and other real estate in a condominium owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control (G.S. 47C-3-103(d)) terminates unless either of the following applies:

- (1) The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.
- (2) The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

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

- (1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this Chapter or by the declaration.
- (2) Unless otherwise specified in the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant, other than a successor described in subdivision (3) or (4) of this subsection, is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration:
  - a. On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or
  - b. On the declarant's transferor, other than any of the following:
    1. Misrepresentations by the transferor or any previous declarant.
    2. Warranty obligations on improvements made by the transferor or any previous declarant, or made before the condominium was created.

3. Breach of any fiduciary obligation by the transferor or any previous declarant or the declarant's appointees to the executive board.
  4. Any liability or obligation imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.
  5. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than those contained in the declaration.
- (3) A successor to only a right reserved in the declaration to maintain models, management offices, sales offices, and signs advertising the condominium (G.S. 47C-2-115), if the successor is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof.
- (4) A successor to all special declarant rights held by a transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section, may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by the successor's transferor to control the executive board in accordance with the provisions of G.S. 47C-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant does not have the right to exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for the successor declarant's acts and omissions under G.S. 47C-3-103(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against, or other obligations of, a transferor declarant other than claims and obligations expressly arising under this Chapter or the declaration.

(g) For the purposes of this section, "assignment of declarant rights" shall include any assignment by the declarant of special declarant rights to a person, including, without limitation, an assignment pursuant to this section. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2015-56, s. 2.)

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

If entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to G.S. 47C-3-103(f) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to G.S. 47C-3-103(f)

takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the unit owners pursuant to G.S. 47C-3-103(f) takes office. Failure of the contract to contain such a provision shall not effect the rights of the association under this section. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-106. Bylaws.**

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

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

(b) Any other matters the association deems necessary or appropriate. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-107. Upkeep; damages; assessments for damages, fines.**

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit or the limited common element assigned to his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common element or limited common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

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

(d) The bylaws of the association may in cases when the claim under subsection (b) or (c) is five hundred dollars (\$500.00) or less provide for hearings before an adjudicatory panel to determine if a unit owner is responsible for damages to any common element or whether the association is responsible for damages to any unit. Such panel shall accord to the party charged

with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each unit owner charged or against the association. Liabilities of unit owners so assessed shall be assessments secured by lien under G.S. 47C-3-116. Liabilities of the association may be offset by the unit owner against sums owing the association and if so offset shall reduce the amount of any lien of the association against the unit at issue.

(e) The declarant alone is liable for maintenance, repair and all other expenses in connection with real estate subject to development rights. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2013-34, s. 1.)

#### **§ 47C-3-107.1. Procedures for fines and suspension of condominium privileges or services.**

Unless a specific procedure for the imposition of fines or suspension of condominium 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 unit owner should be fined or if condominium privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47C-3-102(11). 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 unit 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 assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A unit owner may appeal a 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. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1997-456, s. 27; 2005-422, s. 14.)

#### **§ 47C-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 unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 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 unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must 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 unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and

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 for in the bylaws, meetings of the association and executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2004-109, s. 5; 2005-422, s. 15.)

#### **§ 47C-3-109. Quorums.**

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board of persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-3-110. Voting; proxies.**

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

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

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) the provisions of subsection (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

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

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

- (1) The issue being voted on is of special interest solely to members of the subgroup; and
- (2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

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



or substantially affects living conditions of unit owners not included in the voting subgroup. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-111. Tort and contract liability.**

(a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association must be brought against the association and not against a unit owner.

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

- (1) for all tort losses not covered by insurance carried by the association suffered by the association or that unit owner, and
- (2) for all losses which the association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the declarant for wrongs or actions which occurred during the period of declarant control.

(d) In any case where the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by G.S. 47C-3-117 (Other Liens Affecting the Condominium). (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-112. Conveyance or encumbrance of common elements.**

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; provided, that all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Distribution of the proceeds of the sale of a limited common element shall be as provided by agreement between the unit owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

### **§ 47C-3-113. Insurance.**

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

- (1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

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

(d) Insurance policies carried pursuant to subsection (a) must provide that:

- (1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;
- (2) The insurer waives its right to subrogation under the policy against any unit owner or members of his household;
- (3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

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

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the unit owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners of units not to be rebuilt or owners assigned to limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to lienholders, as their interest may appear, and (3) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interest may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under G.S. 47C-1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, G.S. 47C-2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1998-211, s. 8(a)-(c).)

#### **§ 47C-3-114. Surplus funds.**

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provisions for common expenses and any prepayment of reserves must be

paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-115. Assessments for common expense.**

(a) Until the association makes a common expense assessment, the declarant shall pay all the common expenses. After any assessment has been made by the association, assessments thereafter must be made at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to G.S. 47C-2-107(a). 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.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units 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 units must be assessed exclusively against the units benefited; and

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

(d) Assessments to pay a judgment against the association (G.S. 47C-3-117(a)) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(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. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

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

(a) Any assessment attributable to a unit which remains unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

(b) The association must make reasonable and diligent efforts to ensure that its records contain the unit 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 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 for the unit. If the unit owner is a corporation or limited liability company, the statement shall also be sent by

first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant unit or to a unit for which there is no United States postal address.

(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 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 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. 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 unit except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the unit, 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 unit. 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 unit owner may not be required to pay attorneys' fees and court costs until the unit 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 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 for the unit. The association must make reasonable and diligent efforts to ensure that its records contain the unit 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 unit or a unit 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 unit 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 unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the unit 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 unit. The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the General Statutes:

- (1) The association shall be deemed to have a power of sale for purposes of enforcement of its claim of lien.
- (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of the General Statutes shall mean the association, except as provided otherwise in this Chapter.
- (3) The term "security instrument" as used in Article 2A of Chapter 45 of the General Statutes shall mean the claim of lien.
- (4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes shall mean the person or entity appointed by the association under subdivision (6) of this subsection.
- (5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the unit owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).
- (6) The association shall appoint a trustee to conduct the nonjudicial foreclosure proceeding and sale. The appointment of the trustee shall be included in the claim of lien or in a separate instrument filed with the office of the clerk of court in the county in which the unit is located as an exhibit to the notice of hearing. The association, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a Substitution of Trustee with the clerk of court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the unit owner does not contest the obligation to pay the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien as provided in subdivision (12) of this subsection. Any trustee appointed pursuant to this subsection shall

- have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust.
- (7) If a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.
  - (8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27, the unit owner satisfies the debt secured by the claim of lien and pays all expenses and costs incurred in filing and enforcing the association assessment lien, including, but not limited to, advertising costs, attorneys' fees, and the trustee's commission, then the trustee shall dismiss the foreclosure action and the association shall cancel the claim of lien of record in accordance with the provisions of G.S. 45-36.3. The unit owner shall have all rights granted under Article 4 of Chapter 45 of the General Statutes to ensure the association's satisfaction of the claim of lien.
  - (9) Any person, other than the trustee, may bid at the foreclosure sale. Unless prohibited in the declaration or bylaws, the association may bid on the unit at a foreclosure sale directly or through an agent. If the association or its agent is the high bidder at the sale, the trustee shall allow the association to pay the costs and expenses of the sale and apply a credit against the sums due by the unit owner to the association in lieu of paying the bid price in full.
  - (10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the trustee shall have full power and authority to execute a deed for the unit to the high bidder.
  - (11) The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the foreclosure whether or not a sale is held. Except as provided in subdivision (12) of this subsection, the trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15.
  - (12) If the unit owner does not contest the obligation to pay or the amount of any sums due the association or the validity, enforcement, or foreclosure of the claim of lien at any time after the expiration of the 15-day period following notice as required in subsection (b) of this section, then attorneys' fees and the trustee's commission collectively charged to the unit owner shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The obligation to pay and the amount of any sums due the association and the validity, enforcement, or foreclosure of the claim of lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of any portion of the sums claimed due by the association or the validity, enforcement, or foreclosure of the claim of lien. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.
  - (13) Unit owners shall be deemed to have the rights and remedies available to mortgagors under G.S. 45-21.34.

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

(h) A claim of lien securing a debt consisting 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 may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration, and any claim of 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.

(i) 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 unit 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 after the unit owner has been given notice, as required in subsection (e) of this section. Attorneys' fees incurred in connection with any request that the association agrees to accept payment of all or any part of sums due in installments shall not be included or considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

(j) Where the holder of a first mortgage or first deed of trust of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, the purchaser and its heirs, successors, and assigns shall not be liable for the assessments against the unit which became due prior to the acquisition of title to the unit by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, the term "acquisition of title" means and refers to the recording of a deed conveying title or the time at which the rights of the parties are fixed following the foreclosure of a mortgage or deed of trust, whichever occurs first. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, s. 16; 2006-226, s. 14(a); 2009-515, s. 2; 2011-362, s. 2; 2013-202, s. 1.)

#### **§ 47C-3-116.1. Validation of certain nonjudicial foreclosure proceedings and sales.**

All nonjudicial foreclosure proceedings commenced by an association before October 1, 2013, and all sales and transfers of real property as part of those proceedings pursuant to the provisions of this Chapter, Chapter 47A of the General Statutes, or provisions contained in the declaration of the condominium, are declared to be valid unless an action to set aside the foreclosure is commenced on or before October 1, 2013, or within one year after the date of the sale, whichever occurs last. (2013-202, s. 2.)

#### **§ 47C-3-117. Other liens affecting the condominium.**

(a) A judgment for money against the association is not a lien on the common elements, but if docketed is a lien in favor of the judgment lienholder against all of the units in the



condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Notwithstanding the provisions of subsection (a), if the association has granted a security interest in the common elements to a creditor of the association pursuant to G.S. 47C-3-112, the holder of that security interest must exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) A judgment against the association shall be indexed in the name of the condominium and the association and, if so indexed, is notice of the lien against the units. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

#### **§ 47C-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 unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. 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 unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit 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 unit 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 a unit owner or the unit owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a unit. 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 unit 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. (1985 (Reg. Sess., 1986), c. 877, s. 1; 2005-422, s. 17.)

**§ 47C-3-119. Association as trustee.**

With respect to a third person dealing with the association in the association's capacity as a trustee under G.S. 47C-2-118 following termination or G.S. 47C-3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as such trustee. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

**§ 47C-3-120. Reserved for future codification purposes.**

**§ 47C-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 that member's 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. (2005-422, s. 18; 2006-226, s. 14(b).)

**§ 47C-3-122. Irrigation of landscaping.**

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

- (1) Require the irrigation of landscaping, during any period in which the U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of Environmental Quality has designated an area in which the association is located as an area of severe, extreme, or exceptional drought and the Governor, a State agency, or unit of local government has imposed water conservation measures applicable to the area unless:
  - a. For covenants registered prior to October 1, 2008, the covenant specifically requires the irrigation of landscaping notwithstanding water conservation measures imposed by the Governor, a State agency, or unit of local government. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a period of drought as designated under this subdivision, unless the covenant specifically authorizes fines or other penalties.

- b. For covenants registered on or after October 1, 2008, the covenant must specifically state that any requirement to irrigate landscaping is suspended to the extent the requirement would otherwise be prohibited during any period in which the Governor, a State agency, or unit of local government has imposed water conservation measures. The association may not fine or otherwise penalize an owner of land for violation of an irrigation requirement during a drought designated under this subdivision, unless the covenant authorizes the fines or other penalties. This authorization must be written on the first page of the covenant in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the declarations of covenants.
- (2) For purposes of this section, the term "landscaping" includes lawns, trees, shrubbery, and other ornamental or decorative plants. (2008-143, s. 19(a); 2015-241, s. 14.30(v).)