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

(a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided 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. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-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 lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot 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 lot on which no dwelling has been constructed or to a lot 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 lot at the time the claim of lien is filed, a description of the lot, 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 lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

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

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

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

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 lot 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 clerk of court in the county in which the planned community 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 lot 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, 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 lot 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 lot 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 lot 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 lot 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 lot 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 lot 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 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 lot 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 lot 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) Lot 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 lot 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 lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule after the lot 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 lot obtains title to the lot 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 lot which became due prior to the acquisition of title to the lot by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the lot 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. (1998-199, s. 1; 2005-422, s. 6; 2009-515, s. 1; 2011-362, s. 1; 2013-202, s. 3.)