HOMEOWNER ASSOCIATION ASSESSMENT COLLECTION AND UPDATED NORTH CAROLINA PLANNED COMMUNITY ACT CHAPTER 47F

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ASSESSMENT COLLECTION SUMMARY

I. ***General Overview.***

To the extent permitted by a Declaration of Covenants ("the Declaration") recorded with respect to a particular tract of land and subdivision ("the Subdivision"), the homeowners' association created by the Declaration ("the Association") may, at an annual or special meeting of the Association, levy assessments on each lot within the Subdivision.

The Association may only levy assessments to perform those functions, or provide those services, described in the Declaration.

The Association must, after it determines the amount to be levied, give notice to each lot owner within the Subdivision of the amount that the lot owner is obligated to pay, and the date(s) by which payment(s) is due. Such notice may be by invoice; coupon payment book, or otherwise.

Unfortunately, not all lot owners will pay their assessments when due.

II. ***Late Fees.***

If the Declaration provides for imposition of late fees with respect to unpaid assessments, the Association may impose late fees in the amounts specified in the Declaration.

Furthermore, whether or not the Declaration provides for the imposition of late fees, if an assessment remains unpaid for thirty (30) days or longer, and if the Association is of the type subject to the Planned Community Act, N.C.G.S. § 47F-3-101 *et seq.* ("the Act"), and if the Association has not specifically opted out of applicability of the Act, the Association may, in accordance with the provisions of N.C.G.S. § 47F-3-102(11), impose late fees of $20.00 per month, or ten percent (10%) of the amount of the unpaid assessment, whichever is the greater.

The vast majority of Associations can and should impose late fees of $20.00 when any assessment is more than thirty (30) days late.

III. ***Referral To Counsel***.

If a lot owner persistently fails to pay an assessment, the Association may refer the account to legal counsel for collection.

Prior to such a referral, the Association must give written notice to the lot owner of the

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following:

(A) If the lot owner fails to pay its account in full within fifteen (15) days of the notice, the Association may refer the lot owner's account to an attorney for collection, in which case the Association will be entitled to seek recovery from the lot owner of the attorney's fees and costs incurred; and that the imposition of attorney's fees can be avoided by payment in full, if received within fifteen (15) days of the notice.

(B) If the lot owner would like to make payment arrangements with respect to the unpaid assessment(s), the Association or its agent would be pleased to discuss a payment schedule. The Association must provide a specific name and telephone number for the lot owner to contact to discuss payment arrangements. The Association need not agree to any particular payment arrangement, but must provide the name and telephone number of someone that the lot owner can speak with about a payment plan.

(C) The lot owner has those rights described in the Fair Debt Collection Practices Act, 15 U.S.C. § 1601 *et seq.* ("the FDCP Act"). Not all lot owners are entitled to the notices described in the FDCP Act; however, the Association should, as a matter of policy, provide the notices required therein to all lot owners.

The Association must make reasonable and diligent efforts to send the notice(s) described above to the lot owner's current mailing address, and must send the notice to that address; to any address provided by the lot owner; to the address of record for the lot owner with the tax assessor's office, and to such other addresses as the Association can find through reasonable diligence.

The notice will almost always include a statement of the assessment amounts due; although such a statement can be mailed separately.

If the lot owner fails to pay the unpaid assessment(s) within fifteen (15) days of the notice(s) described above, the Association can refer the account to counsel for collection, and recover the costs and expenses incurred by counsel.

IV. ***The Lien.***

While counsel may follow up on the notice described above with a demand letter directed to the lot owner, generally, the first action that counsel for the Association will take upon receipt of an Association collection file is to file, with the Clerk of Superior Court for the County where the property sits, the lien authorized by N.C.G.S. § 47F-3-116(a).

The lien will, upon filing, attach to the lot; any sale of the Property will be subject to the lien, and, therefore, filing of the lien will generally prevent any transfer of the property without arrangements being made for full payment of the lot owner's obligations to the Association. An

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assessment lien remains of record and enforceable for three (3) years after filing.

V. Foreclosure of the Lien.

If the lot owner does not pay after filing of the lien, the Association may foreclose upon the lien using one of two (2) different procedures summarized as follows:

1. *Power of Sale Foreclosure.*

First, the Association may ask counsel to foreclose upon the lien, in "like manner as a mortgage on real estate under power of sale" under Article 45 of the General Statutes, or through a "Power of Sale Foreclosure". Power of Sale Foreclosures are filed as Special Proceedings, and counsel acting at the request of the Association simply seeks entry of an order from the Clerk appointing counsel as a Trustee or Commissioner, and allowing counsel to sell the property subject to the lien.

2. *Judicial Foreclosure.*

Second, the Association may ask counsel to foreclosure upon the lien in by civil action in a "Judicial Foreclosure." Judicial Foreclosures are filed a Civil Actions, with counsel seeking judgment for the unpaid assessments and costs, and entry of an order from a Judge of the District or Superior Court providing for sale of the property subject to the lien.

Choosing Between Power of Sale and Judicial Foreclosure

Generally, the Association will want to foreclose its lien in a Power of Sale foreclosure; as Power of Sale foreclosures are quicker and less costly than Judicial foreclosures. Most importantly, in a Power of Sale foreclosure, the Sheriff can, if he can not serve the lot owner personally, serve the lot owner by posting the property; and service is very often an issue in assessment collection cases.

The Association should only pursue Judicial foreclosures in those cases where Power of Sale foreclosures are not permitted (such as when the only amounts due are for fines or interest on fines), if the Association wants to seek relief in addition to simply collecting the past due assessments (such as if the Association wants an order requiring the lot owner to remove an unapproved addition), or if the Association wants a Judgment against the lot owner for the unpaid assessments and costs, as well as an order directing sale of the underlying property.

A. *Procedure In Power Of Sale Foreclosure.*

In a Power of Sale Foreclosure, counsel will file a notice of foreclosure hearing ("the Notice of Hearing") with the Clerk, commencing a Special Proceeding. In accordance with the provisions of N.C.G.S. § 45-21.16, the Notice of Hearing will, among other things, identify the

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lien, the property being foreclosed, the nature of the default and will specify a date and time at which lot owner may appear and show cause why the foreclosure should not continue. The Notice of Hearing must be served on the lot owner not less than 20 days prior to the noticed hearing date.

1. The Foreclosure Hearing.

At the foreclosure hearing, the Clerk will enter an order permitting sale of the underlying property by a Trustee or Commissioner ("the Trustee") to satisfy the Association's lien if the Clerk finds: (i) a valid debt owing by the lot owner; (ii) default; (iii) the right to foreclose; and (iv) timely notice to those entitled to receive the same.

2. Appeal to the Superior Court.

Any party at the foreclosure hearing before the Clerk may, in accordance with the provisions of N.C.G.S. § 45-21.16(d1), appeal an adverse decision of the Clerk to the Superior Court, which will hear the matter *de novo*. Hearing on such an appeal has priority over most other matters.

If a lot owner appeals, it does not stay the Association from proceeding with the sale authorized by the Foreclosure Order; unless the lot owner secures a stay order and posts a bond with the Clerk. Nevertheless, even if the lot owner does not secure a stay, it is usually best to simply wait until the appeal is heard in the Superior Court before proceeding with sale.

3. Sale.

Upon entry of an order permitting the sale of the underlying Property to satisfy the lien, the Trustee may, in accordance with the provisions of N.C.G.S. § 45-21.17, notice the Property for sale. The notice of sale must be served on the lot owner; posted on the County public notice board at least twenty (20) days prior to the sale; and must be published in a newspaper of general circulation in the County where the sale is to take place at least once a week for two (2) weeks prior to the sale.

The Trustee may postpone the sale, more than once, for up to ninety (90) days after the original sale date. Unfortunately, if the sale does not take place within ninety (90) days of the originally scheduled sale date, the Association will need to secure an order permitting resale, and the Trustee will thereafter need to re-notice the sale and re-publish the notice of sale. It is seldom advisable not to complete a lien foreclosure sale within ninety (90) days of the originally scheduled sale date, because of the additional costs that are, by necessity, incurred in connection with a resale.

On the sale date, the Trustee will expose the Property to bid; and at the conclusion of the sale will report the identity of the last and highest bidder to the Clerk.

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The last and highest bid on the sale date is subject to upset by higher bids, with each upset bid being at least 5% of $750.00 greater than the immediately preceding bid.

If it has been more than ten (10) days since the sale date without an upset bid being filed, or if it has been more than ten (10) days since the last upset bid, the last bid is accepted; and the Trustee will make arrangements to convey title to the Property to the last and highest bidder, whether that bidder is the Association, or some third party bidder.

4. Effect of Sale.

In most cases, the Association will be the last and highest bidder; and the Trustee will deliver a Trustee's Deed to the Association. The Trustee's Deed will transfer title to the Association subject to any matters that may have been of record as of the date the Lien was filed; and the lot owner's obligations will be credited with the amount that the Association bid at the foreclosure sale.

In most of the cases where the Association is the last and highest bidder, there will be a first or second deed of trust with respect to the Property foreclosed, and the Association's fee interest will be of little value. In particular, in most cases, if the Association acquires title, the first will or will have commenced a foreclosure proceeding with respect to the underlying property; and upon completion of its foreclosure, the Association's interest in the property will simply be cut off.

Sometimes, the homeowner will wish to purchase the property foreclosed after title has transferred to the Association; and in very rare cases a third party will purchase the Association's interest; however, in most cases, the first will simply foreclose upon its deed of trust and cut off the Association's interest. Theoretically, the Association could lease the property that it has acquired at a foreclosure sale; or otherwise generate income relating to its interest, but it is very rarely feasible.

5. Securing Possession.

When the Association acquires title to property at its foreclosure sale, it may secure possession of the same, and evict any occupants by procedures provided for in Article 45 of the General Statutes. Generally, it will take around 30 days to evict an owner/occupant. However, with respect to tenants, The Protecting Tenants at Foreclosure Act (PTFA) applies to foreclosures on residential properties occurring after May 20, 2009. This is a federal statute, and trumps state law. As stated in its title, the purpose of the act is to protect bona fide tenants from foreclosures by requiring a minimum 90 day notice to vacate. A tenant is considered a bona fide tenant if (1) the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor under the contract (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy. Any immediate successor in interest in such property pursuant to the foreclosure takes title to such property

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subject to sending a notice to vacate to any bona fide tenant at least ninety days before the effective date of such notice; and subject to the rights of any bona fide tenant, as of the date of such notice of foreclosure. Under a bona fide lease entered into prior to the notice of foreclosure, the bona fide tenant may remain occupying the premises until the end of the remaining term of the lease, assuming the tenant is abiding by the terms of the lease. Provided, a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the ninety (90) day notice to vacate. It does not matter if the lease is not recorded or if the lease is not in writing. A bona fide tenant is still entitled to a ninety day notice to vacate. If the occupant is not a bona fide tenant, then the occupant is only entitled to a ten (10) day notice to vacate pursuant to North Carolina law.

B. ***Procedure In Judicial Foreclosures.***

The Association may seek to collect unpaid assessments secured by a lien by Judicial Foreclosure. Judicial Foreclosures are Civil Actions, commenced by filing a Complaint with the Clerk of Court seeking entry of a Judgment against the lot owner for the unpaid assessments (and costs), and to an order directing the sale of the property subject to the underlying Lien to satisfy the lot owner's obligations to the Association. [As with a Power of Sale Foreclosure, title acquired at a judicial sale is subject to deeds of trust or liens of record filed prior to the date of the Association's lien.]

The procedure for a Judicial Foreclosure is the same as in any Civil Action. The Association, as Plaintiff, must serve the Civil Summons and Complaint personally on the lot owner; the lot owner has thirty (30) days after service to file an answer or other response; either party may engage in discovery under the Rules of Civil Procedure; and either party may seek judgment by summary judgment, default judgment, or through trial (and the matter will be tried by jury if any party requests the same).

If the Judicial Foreclosure is filed in the Superior Court Division, mediation will be ordered; and if the Judicial Foreclosure is filed in the District Court Division, the matter may be subject to non-binding arbitration.

If the only thing that the Association seeks to accomplish is collection of unpaid assessments; the Association will usually want to avoid Judicial Foreclosure, and conduct a Power of Sale Foreclosure. In particular, it is much more difficult to serve the lot owner in a Judicial Foreclosure; and discovery, mediation, and all of the paraphernalia of a normal Civil Action can, and usually does, greatly increase both the costs incurred, and the time to final resolution.

The Association will only want to consider Judicial Foreclosure if the Association has other claims; or if the Association believes that the first will foreclose quickly and/or it wants a judgment of record against the lot owner (as a regular civil judgment is not wiped out by the foreclosure by the first).

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Chapter 47F.
North Carolina Planned Community Act.

Article 1.

General Provisions.

§ 47F-1-101. Short title.

This Chapter shall be known and may be cited as the North Carolina Planned Community Act. (1998-1999, s. 1.)

§ 47F-1-102. Applicability.

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

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

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by

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

(e) This Chapter does not apply to planned communities or lots located outside this State. (1998-199, s. 1; 2002-112, s. 2; 2004-109, s. 3; 2005-214, s. 1; 2005-422, s. 9; 2006-226, s. 15(a).)

§ 47F-1-103. Definitions.

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

(1) Reserved.

(2) "Allocated interests" means the common expense liability and votes in the association allocated to each lot.

(3) "Association" or "owners' association" means the association organized as allowed under North Carolina law, including G.S. 47F-3-101.

(4) "Common elements" means any real estate within a planned community owned or leased by the association, other than a lot.

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.

(7) "Condominium" means real estate, as defined and created under Chapter 47C [of the General Statutes].

(8) "Cooperative" means real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

(9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person's or group's interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

(10) "Declaration" means any instruments, however denominated, that create a planned community and any amendments to those instruments.

(11) Reserved

(12) Reserved.

(13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14) Reserved

(15) Reserved.

(16) "Leasehold planned community" means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.

(17) "Lessee" means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.

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

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

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

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

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

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

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

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

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

(27) Reserved.

(28) "Special declarant rights" means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.

(29) Reserved. (1998-199, s. 1.)

§ 47F-1-104. Variation.

(a) Except as specifically provided in specific sections of this Chapter, the provisions of this Chapter may not be varied by the declaration or bylaws.

(b) The provisions of this Chapter may not be varied by agreement; however, after breach of a provision of this Chapter, rights created hereunder may be knowingly waived in writing.

(c) Notwithstanding any of the provisions of this Chapter, a declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this Chapter, the declaration, or the bylaws. (1998-199, s. 1.)

§ 47F-1-105. Reserved for future codification purposes.

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§ 47F-1-106. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. Otherwise, no provision of this Chapter invalidates or modifies any provision of any zoning, subdivision, or building code or any other real estate use law, ordinance, or regulation. No local ordinance or regulation may require the recordation of a declaration prior to the date required by this Chapter. (1998-199, s. 1.)

§ 47F-1-107. Eminent domain.

(a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent domain leaving the lot owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the lot owner for his lot and its interest in the common element. Upon acquisition, unless the decree otherwise provides, the lot's allocated interests are automatically reallocated to the remaining lots in proportion to the respective allocated interests of those lots before the taking, exclusive of the lot taken.

(b) Except as provided in subsection (a) of this section, if part of a lot is acquired by eminent domain, the award shall compensate the lot owner for the reduction in value of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated interests are reduced in proportion to the reduction in the size of the lot, or on any other basis specified in the declaration, and (ii) the portion of the allocated interests divested from the partially acquired lot are automatically reallocated to that lot and the remaining lots in proportion to the respective allocated interests of those lots before the taking, with the partially acquired lot participating in the reallocation on the basis of its reduced allocated interests.

(c) If there is any reallocation under subsection (a) or (b) of this section, the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a lot remaining after part of a lot is taken under this subsection is thereafter a common element.

(d) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be apportioned among the owners of the lots to which that limited common element was allocated at the time of acquisition based on their allocated interest in the common elements before the taking.

(e) The court decree shall be recorded in every county in which any portion of the planned community is located. (1998-199, s. 1.)

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§ 47F-1-108. Supplemental general principles of law applicable.

The principles of law and equity as well as other North Carolina statutes (including the provisions of the North Carolina Nonprofit Corporation Act) supplement the provisions of this Chapter, except to the extent inconsistent with this Chapter. When these principles or statutes are inconsistent or conflict with this Chapter, the provisions of this Chapter will control. (1998-199, s. 1.)

§ 47F-1-109. Reserved for future codification purposes.

Article 2.

Creation, Alteration, and Termination of Planned Communities.

§ 47F-2-101. Creation of the planned community.

A declaration creating a planned community shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the planned community is located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration. (1998-199, s. 1.)

§ 47F-2-102. Reserved for future codification purposes.

§ 47F-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47F-3-102(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

(d) Title to a lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Chapter. Whether a substantial failure to comply with this Chapter impairs marketability shall be determined by the law of this State relating to marketability. (1998-199, s. 1.)

§§ 47F-2-104 through 47F-2-116. Reserved for future codification purposes.

§ 47F-2-117. Amendment of declaration.

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(a) Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.

(d) Reserved.

(e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41. (1998-199, s. 1.)

§ 47F-2-118. Termination of planned community.

(a) Except in the case of taking of all the lots by eminent domain (G.S. 47F-1-107), a planned community may be terminated only by agreement of lot owners of lots to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the lots in the planned community are restricted exclusively to nonresidential uses.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recordation.

(c) A termination agreement may provide for sale of the common elements, but may not require that the lots be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the lot owners consent to the sale. If, pursuant to the agreement, any real estate in the planned community is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(d) The association, on behalf of the lot owners, may contract for the sale of real estate in the planned community, but the contract is not binding until approved pursuant to subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds thereof distributed, the association continues

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in existence with all powers it had before termination. Proceeds of the sale shall be distributed to lot owners and lienholders as their interests may appear, as provided in the termination agreement.

(e) If the real estate constituting the planned community is not to be sold following termination, title to the common elements vests in the lot owners upon termination as tenants in common in proportion to their respective interests as provided in the termination agreement.

(f) Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for lot owners and holders of liens on the lots as their interests may appear. All other creditors of the association are to be treated as if they had perfected liens on the common elements immediately before termination.

(g) If the termination agreement does not provide for the distribution of sales proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this section, sales proceeds shall be distributed and title shall vest in accordance with each lot owner's allocated share of common expense liability.

(h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a lien or encumbrance against the common elements does not of itself terminate the planned community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common elements other than withdrawable real estate does not withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

(i) If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned community. (1998-199, s. 1.)

§ 47F-2-119. Reserved for future codification purposes.

§ 47F-2-120. Master associations.

If the declaration for a planned community provides that any of the powers described in G.S. 47F-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of one or more other planned communities or for the benefit of the lot owners of one or more other planned communities, all provisions of this act applicable to lot owners' associations apply to any such corporation. (1998-199, s. 1.)

§ 47F-2-121. Merger or consolidation of planned communities.

(a) Any two or more planned communities, by agreement of the lot owners as provided in subsection (b) of this section, may be merged or consolidated into a single planned community. In the event of a

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merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more planned communities to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting planned communities following approval by owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community. Any such agreement shall be recorded in every county in which a portion of the planned community is located and is not effective until recorded.

(c) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the lots of the resultant planned community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall common expense liabilities and votes in the new association which are allocated to all of the lots comprising each of the preexisting planned communities, and providing that the portion of the percentages allocated to each lot formerly comprising a part of the preexisting planned community shall be equal to the percentages of common expense liabilities and votes in the association allocated to that lot by the declaration of the preexisting planned community. (1998-199, s. 1.)

Article 3.

Management of Planned Community.

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

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

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

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

(1) Adopt and amend bylaws and rules and regulations;

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(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(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. 47F-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 the limited common elements and for services provided to lot owners;

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

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

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;

(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;

(15) Assign its right to future income, including the right to receive common expense assessments;

(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association. (1998-199, s. 1; 2004-109, s. 4; 2005-422, s. 1.)

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

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

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

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

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

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

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

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

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

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

If entered into before the executive board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office, any contract or lease affecting or related to the planned community that is not bona fide or was unconscionable to the lot 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 lot owners pursuant to G.S. 47F-3-103(e) takes office upon not less than 90 days' notice to the other party. (1998-199, s. 1.)

§ 47F-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 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) The bylaws may provide for any other matters the association deems necessary and appropriate. (1998-199, s. 1.)

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

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

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

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

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

(d) When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board to determine if a lot owner is responsible for damages to any common element or the association is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. 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 liability for each damage incident against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the association shall be determined as otherwise provided by law. Liabilities of lot owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the lot owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the lot at issue.

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

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

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

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assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The lot owner may appeal the decision of an adjudicatory panel to the full executive board by delivering written notice of appeal to the executive board within 15 days after the date of the decision. The executive board may affirm, vacate, or modify the prior decision of the adjudicatory body. (1997-456, s. 27; 1998-199, s. 1; 2005-422, s. 4.)

§ 47F-3-108. Meetings.

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

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

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

§ 47F-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) 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 if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

(c) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum

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requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. (1998-199, s. 1.)

§ 47F-3-110. Voting; proxies.

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

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

(c) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots 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 lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

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

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

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

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

(f) For purposes of subdivision (e)(1) above, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup. (1998-199, s. 1.)

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

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

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

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

§ 47F-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, or any larger percentage the declaration specifies, agree in writing to that action; provided that all the owners of lots to which any limited common element is allocated shall 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 the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall be as provided by agreement between the lot 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) The association, on behalf of the lot 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 subsection (a) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the association in or to the common element conveyed or encumbered, including the power to execute deeds or other instruments.

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

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

§ 47F-3-113. Insurance.

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(a) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the association shall maintain, to the extent reasonably 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 for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If the insurance described in subsection (a) 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 lot 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 lot owners.

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

(1) Each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household;

(3) No act or omission by any lot owner, unless acting within the scope of the owner's 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 lot owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are 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 lot owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and lot 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 planned community is terminated.

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

(f) 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 lot 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 lot 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.

(g) Any portion of the planned community for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the 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 any portion of the planned community is not repaired or replaced, (i) 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 planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

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

§ 47F-3-114. Surplus funds.

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

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

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

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

(c) To the extent required by the declaration:

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

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

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

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

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

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

§ 47F-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as

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assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes, 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.

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

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

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

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

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

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

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the

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outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

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

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

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

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

§ 47F-3-118. Association records.

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

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

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

§ 47F-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. 47F-2-118 following termination or G.S. 47F-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 trustee. (1998-199, s. 1.)

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

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

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

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

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

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

1. Flag of the United States of America;

2. American flag;

3. United States flag; or

4. North Carolina flag.

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

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

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

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

b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be

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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. 8; 2006-226, s. 15(b).)

§ 47F-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 Environment and Natural Resources 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 declarations of 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 a 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(b).)

Chapter 47E. Residential Property Disclosure Act

§ 47E-1. Applicability

This Chapter applies to the following transfers of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesman:

(1) Sale or exchange,

(2) Installment land sales contract,

(3) Option, or

(4) Lease with option to purchase, except as provided in G.S. 47E-2(10).

Added by Laws 1995, c. 476, § 1, eff. Jan. 1, 1996. Amended by S.L. 1997-472, § 5, eff. Dec. 1, 1997.

§ 47E-2. Exemptions

The following transfers are exempt from the provisions of this Chapter:

(1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers from one or more co-owners solely to one or more other co-owners.

(5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.

(6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.

(7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.

(8) Transfers to or from the State or any political subdivision of the State.

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(9) Transfers involving the first sale of a dwelling never inhabited.

(10) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.

(11) Transfers between parties when both parties agree not to complete a residential property disclosure statement or an owners' association and mandatory covenants disclosure statement.

Added by Laws 1995, c. 476, § 1, eff. Jan. 1, 1996.

47E-3. Definitions

When used in this Chapter, unless the context requires otherwise, the term:

(1) "Owner" means each person having a recorded present or future interest in real estate that is identified in a real estate contract subject to this Chapter; but shall not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.

(2) "Purchaser" means each person or entity named as "buyer" or "purchaser" in a real estate contract subject to this Chapter.

(3) "Real estate contract" means a contract for the transfer of ownership of real property by the means described in G.S. 47E-1.

(4) "Real property" means the lot or parcel, and the dwelling unit(s) thereon, described in a real estate contract subject to this Chapter.

Added by Laws 1995, c. 476, § 1, eff. Jan. 1, 1996.

§ 47E-4. Required disclosures.

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

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(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(b1) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an owners' association and mandatory covenants disclosure statement.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this subsection. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling. The standard disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the property, including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

a. The name, address, telephone number, or e-mail address for the president or manager of the association to which the lot is subject.

b. The amount of any regular assessments or dues to which the lot is subject. SL2011-0362 Session Law 2011-362 Page 3

c. Whether there are any services that are paid for by regular assessments or dues to which the lot is subject.

d. Whether, as of the date the disclosure is signed, there are any assessments, dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject.

e. Whether, as of the date the disclosure is signed, there are any unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold.

f. Any fees charged by an association or management company to which the lot is subject in connection with the conveyance or transfer of the lot to a new owner.

(2) The owners' association and mandatory covenants disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics, or conditions or the owner is making no representations as to any characteristic or condition contained in the statement.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement or the owners' association and mandatory covenants disclosure statement, as applicable, states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them.

47E-5. Time for disclosure; cancellation of contract.

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the disclosure ~~statement~~ statements required by this Chapter no later than the time the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement or the owners' association and mandatory covenants disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure ~~statement~~ statements required by this Chapter ~~is~~ are not delivered to the purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in compliance with this subsection, the cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

47E-6. Owner liability for disclosure of information provided by others.

The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement and the owners' association and mandatory covenants disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it.

47E-7. Change in circumstances.

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If, subsequent to the owner's delivery of a residential property disclosure statement and the owners' association and mandatory covenants disclosure statement to a purchaser, the owner discovers a material inaccuracy in ~~the~~ a disclosure ~~statement~~,statement, or ~~the~~ a disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to the purchaser. Failure to deliver ~~the~~ a corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted.

47E-8. Agent's duty.

A real estate broker or salesman acting as an agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker or salesman of the client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure ~~statement.~~statement or an owners' association and mandatory covenants disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes.

SECTION 3.(g) This section becomes effective January 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date. The North Carolina Real Estate Commission shall develop and make available the standard disclosure form required by G.S. 47E-4(b1), as enacted by Section 3(b) of this act, by December 1, 2011.

SECTION 4. The North Carolina Real Estate Commission shall develop and make available for homebuyers a brochure about restrictive covenants. The brochure shall include an explanation that unpaid assessments, fines, fees, or charges may result in foreclosure of the owner's property. The brochure shall be available by December 1, 2011.

47E-9. Rights and duties under Chapter 42, landlord and tenant, not affected during lease

This Chapter shall not affect the landlord-tenant relationship between the parties to a lease with option to purchase contract during the term of the lease, and the rights and duties of landlords and tenants under Chapter 42 of the General Statutes shall remain in effect until transfer of ownership of the property to the purchaser.

47E-10. Authorization to prepare forms; fees

The North Carolina Real Estate Commission may prepare, or cause to be prepared, forms for use pursuant to this Chapter. The Commission may charge a fee not to exceed twenty-five cents (25¢) per form plus the costs of postage.

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