

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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HOUSE BILL 992
Committee Substitute Favorable 5/6/25

Short Title: Timeshare Foreclosures.

(Public)

Sponsors:

Referred to:

April 14, 2025

A BILL TO BE ENTITLED
AN ACT TO CREATE A TIMESHARE TRUSTEE FORECLOSURE PROCESS FOR
CERTAIN DELINQUENT ASSESSMENTS FOR TIMESHARES LOCATED IN THIS
STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-62 reads as rewritten:

"§ 93A-62. Delinquent assessments; developer guarantee.

(a) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to interest, the managing entity may charge a reasonable administrative late fee for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a lien in favor of the managing entity upon the timeshare with respect to which the delinquent assessment has been incurred.

(b) The managing entity may deny the use of the timeshare units or facilities, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods, to any owner who is delinquent in the payment of any assessments made by the managing entity against the owner for common expenses, in accordance with the following:

- (1) The managing entity must, no less than 30 days after the date the assessment is due, notify the owner in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare program or by law and including a per diem amount. The notice shall be sent to the owner at the owner's known address as recorded in the books and records of the timeshare program.
- (2) The notice shall clearly state that the owner will not be permitted to use the owner's timeshare, that the owner will not be permitted to make a reservation in the timeshare program's reservation system, or that any confirmed reservation may be canceled until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist.
- (3) The notice shall be effective to bar the use of the owner and those claiming use rights under the owner, including the owner's guests, lessees, and persons receiving use rights in the timeshare through an exchange program; provided, however, that (i) a managing entity desiring to deny the use of the timeshare to persons receiving use rights in the delinquent owner's timeshare through an



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exchange program that has an affiliation agreement with the managing entity shall notify the affiliated exchange company in writing of the denial of use at the time that the notice was sent to the owner and (ii) any person claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent owner's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of the written notice from the managing entity shall be permitted by the managing entity to use the owner's use rights.

(4) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of this section may be assessed by the managing entity against the delinquent owner and collected in the same manner as if those costs were common expenses of the timeshare program allocable solely to the delinquent purchaser.

(5) A managing entity may not enforce the denial of use against any one owner or group of owners without similarly enforcing it against all owners, including all developers.

(c) In addition to the denial of use pursuant to subsection (b) of this section, the managing entity may give further notice to the delinquent owner that the managing entity may rent the delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the following:

(1) A further notice of intent to rent must be given no less than 30 days after the date the assessment is due and must be delivered to the purchaser in the manner required for notices under subsection (b) of this section.

(2) The notice shall state that unless the owner satisfies the delinquency in full, or unless the owner produces satisfactory evidence that the delinquency does not exist, the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the owner's timeshare or appurtenant use rights.

(3) The notice shall state that the owner will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency, and the managing entity shall not be required to provide any further notice to the owner regarding any residual delinquency.

(4) The managing entity's efforts to secure a rental shall not commence on a date earlier than 10 days after the date of the notice of intent to rent.

(5) The managing entity must apply the proceeds of any rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals to the delinquent owner's account.

(6) A managing entity may make a reasonable determination regarding the priority of rentals of timeshares and, if the delinquent owner whose timeshare is rented cannot be specifically determined due to the structure of the timeshare program, the managing entity may allocate any net rental proceeds in any reasonable manner.

(7) In securing a rental, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare or appurtenant rights; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshares or use rights generally secured at that time.

(d) For timeshare estates located in this State, the managing entity shall have a lien on a timeshare for any assessment levied against that timeshare from the date such assessment becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the owner's guest or lessee that results in damage to the timeshare property. All of the following apply to a lien imposed under this section:

(1) The managing entity, or the holder of the lien, may bring a judicial action in its name to foreclose the lien in the nature of an action to foreclose a mortgage or deed of trust and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing ~~entity~~ entity, or the holder of the lien, may initiate a ~~nonjudicial timeshare trustee~~ foreclosure proceeding pursuant to G.S. 93A-62.1 to foreclose the assessment lien.

(2) The lien is effective from the date of and shall relate back to the recording of the original timeshare declaration, or, in the case of lien on a timeshare located in a phase timeshare program, the last to occur of the recording of the original timeshare declaration or amendment creating the timeshare. However, as to first mortgages of record, the lien is effective from and after filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.

(3) The claim of lien shall state the name of the timeshare program and identify the timeshare for which the lien is effective, state the name of the owner, state the assessment amount due, and state the due dates. The claim of lien shall be signed and acknowledged by an officer or agent of the managing entity or the ~~holder~~ holder of the lien. 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 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR TIMESHARE IN THE NATURE OF AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST OR A TIMESHARE TRUSTEE FORECLOSURE UNDER NORTH CAROLINA LAW."

(4) The lien shall expire upon the earlier of:

- The date it is satisfied.
- Five years from the date the claim of lien is filed unless an action to enforce or foreclose the lien is commenced within that time.

(5) A claim of lien for assessments may include assessments which are due when the claim is recorded and all assessments that subsequently become due and are delinquent. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.

(6) A judgment in any judicial action or suit brought to foreclose the claim of lien may include costs and reasonable attorney's fees for the substantially prevailing party. For a timeshare trustee foreclosure brought pursuant to this section, the managing entity or the holder of the lien shall be entitled to recover its costs, including reasonable attorney's fees and trustee's fees.

(e) ~~A~~ Except in the event of a timeshare trustee foreclosure conducted in accordance with G.S. 93A-62.1, a successor in interest, regardless of how the timeshare has been acquired, including a purchaser at a judicial ~~sale or foreclosure trustee~~ sale, is jointly and severally liable with their predecessor in interest for all unpaid assessments against the predecessor up to the time of transfer of the timeshare to a successor, without prejudice to any right a successor in interest may have to recover from their predecessor in interest any amounts assessed against the

predecessor and paid by the successor; provided, however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee. In the event of a timeshare trustee foreclosure, owners who do not object to use of the timeshare trustee foreclosure procedure, as provided in G.S. 93A-62.1(e), shall not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare are insufficient to offset the amounts secured by the lien, and any successor to the owner that acquires title to a timeshare as a result of a timeshare trustee foreclosure under G.S. 93A-62.1 shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner that came due prior to acquisition of title by the successor.

(f) If the developer agrees to guarantee the level of assessments for the timeshare program for any period of time, the developer may be excused from the payment of the developer's share of the assessments that otherwise would have been assessed against developer-owned timeshares during the guarantee period, provided that the developer guarantees that (i) during the guarantee period the assessments against owner timeshares will not increase over the dollar amount stated in the adopted, good-faith budget of the timeshare program and (ii) the developer will pay any amount by which all common expenses incurred during the guarantee period exceed the total revenues of the timeshare program during the guarantee period."

SECTION 2. Article 4 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"§ 93A-62.1. Procedure for timeshare trustee foreclosure of assessment liens.

(a) This section is intended to provide, as an alternative to judicial foreclosure, a simple and inexpensive method of enforcing payment of assessments, to the knowledge of all persons, and recognize, in authorizing this timeshare trustee foreclosure proceeding, that all persons owning a timeshare know or should know that the assessment lien on their timeshare may be foreclosed and the timeshare sold for failure to pay assessments.

(b) A claim of lien complying with the requirements of G.S. 93A-62(d)(3) and subsection (d) of this section must be filed in the office of the clerk of the superior court of the county in which the timeshare is located in the manner provided in this section.

(c) No fewer than 15 days prior to filing the claim of lien, the managing entity or the holder of the lien shall mail a statement of the assessment amount due by first-class mail to the owner's address as recorded in the books and records of the timeshare program. If the record owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding any provision of this Chapter to the contrary, there shall be no requirement that notice under this subsection be mailed to an owner's timeshare unit or otherwise posted at the timeshare project. The managing entity or the holder of the lien shall make diligent efforts to ensure that its records contain the unit owner's mailing address.

(d) The person signing the claim of lien on behalf of the holder shall attach to and file with the claim of lien a certificate, that has been signed and sworn to or affirmed before a notary public, certifying that notice of the lien was sent to the record owner and those entitled to receive notice, pursuant to both of the following methods: (i) by registered or certified mail, return receipt requested, or by designated delivery service pursuant to 26 U.S.C. § 7502(f)(2) with a delivery receipt requested and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the owner's known address as recorded in the books and records of the timeshare program. As used in this section, "delivery receipt" includes an electronic or facsimile receipt.

(e) The managing entity, holder of the lien, or designated trustee filing the certificate provided for in subsection (h) of this section shall, at least 30 days prior to docketing the judgment, send notice of the assessment lien foreclosure to the owner in the same manner as a

claim of lien under subsection (d) of this section to the owner at the owner's known address as recorded in the books and records of the timeshare program and to all lienholders with liens that have attached after the effective date of the timeshare claim of lien filed in accordance with subsection (b) of this section. The notice required by this subsection shall (i) state that a judgment will be docketed and the proposed date of the docketing, (ii) state that the judgment will authorize a sale of the timeshare pursuant to a timeshare trustee foreclosure proceeding, (iii) provide a brief description of the timeshare affected, (iv) include the filing information for the claim of lien if previously filed with the clerk of the superior court, and (v) state that the lien may be satisfied prior to judgment being entered. The notice shall also include an objection form that the owner can use to object to use of the timeshare trustee foreclosure process within 30 days of receipt of the notice by signing and returning the objection form to the managing entity, holder of the lien, or designated trustee, and in such event the lien may thereafter only be foreclosed by filing a judicial foreclosure action. The objection form described in this subsection shall identify the owner, the timeshare interest, and the return address of the trustee and shall state: "The undersigned owner exercises the owner's right to object to the use of the timeshare trustee foreclosure procedure contained in G.S. 93A-62.1." The notice required by this subsection may be combined with the notice of lien required to be given pursuant to subsection (d) of this section and shall also contain a statement in substantially the following form:

"You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the timeshare trustee foreclosure procedure. Upon the trustee's receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. If you do not object to the use of the timeshare trustee foreclosure procedure, you will not be subject to a deficiency judgment, even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien."

(f) If, within 10 days following the mailing of the notice required by subsection (e) of this section, a return receipt or delivery receipt has not been received by the managing entity, holder of the lien, or designated trustee indicating receipt of the notice, then the managing entity, holder of the lien, or designated trustee shall have a notice published in a newspaper of general circulation in the county where the timeshare is located once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the owner that a judgment will be docketed against the owner.

(g) All costs of mailing and publication, plus a charge of two hundred fifty dollars (\$250.00) to defray administrative costs, shall be added to the amount of assessments that are a lien on the timeshare and shall be paid by the owner to the managing entity or holder of the lien at the time the assessments are collected or the timeshare is sold.

(h) Except as provided in subsection (s) of this section, no sooner than six months since the indebtedness described in the claim of lien became due and after filing the claim of lien, the managing entity, holder of the lien, or designated trustee may foreclose the lien by filing a certificate, that has been signed and sworn to or affirmed before a notary public, with the clerk of the superior court, showing the following: (i) the record owner of the timeshare on which there is a lien for unpaid assessments, together with the amount of assessments, including taxes, penalties, interest, and costs that are covered by the lien, (ii) the year or years for which the assessments are due, (iii) a description of the timeshare sufficient to permit its identification by parol testimony, and (iv) the filing information for the claim of lien if previously filed with the clerk of the superior court. The fees for docketing and indexing of the certificate assessed pursuant to G.S. 7A-308(a)(11) are payable to the clerk of the superior court at the time the certificate is filed.

(i) Immediately upon the docketing and indexing of a certificate as provided in subsection (h) of this section, the assessments, including taxes, penalties, interest, and costs, constitute a valid judgment against the timeshare described in the judgment with the priority

provided for claims of lien in G.S. 93A-62(d)(2). The judgment, except as expressly provided in this section, has the same force and effect as a duly rendered judgment of the superior court directing sale of the timeshare for the satisfaction of the assessment lien, and it shall bear interest at an annual rate of eight percent (8%).

(j) At any time prior to the issuance of a certificate of sale in accordance with subdivision (8) of subsection (l) of this section, any person entitled to notice under this section may appear before the clerk of superior court and move to set aside the judgment on the ground that the assessment has been paid or that the assessment lien on which the judgment is based is invalid.

(k) Upon payment in full of any judgment docketed under this section, together with interest and costs accrued to the date of payment, the managing entity, holder of the lien, or designated trustee receiving payment shall certify the fact of the payment to the clerk of superior court and cancel the judgment.

(l) At any time after 30 days and before one year from the indexing of the judgment as provided in subsection (h) of this section, at the request of the managing entity or holder of the lien, the timeshare shall be sold by a trustee in a public auction held in the county in which the timeshare project is located on the date, location, and starting time designated in the notice of sale sent in accordance with this subsection. The trustee's sale shall occur at a location consistent with G.S. 45-21.4. The timeshare trustee foreclosure sale shall be conducted in accordance with the following:

(1) The managing entity or the holder of the lien shall appoint a trustee, who shall conduct the sale and act as the auctioneer. The appointment of the trustee shall be included in the claim of lien or the certificate. The managing entity or the holder of the lien, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a substitution of trustee with the clerk of superior court. Counsel for the managing entity or for the holder of the lien may be appointed by the managing entity or by the holder of the lien to serve as the trustee and may serve in that capacity as long as the owner does not contest the obligation to pay the amount of any sums due the managing entity or the holder of the lien, or the validity, enforcement, or foreclosure of the claim of lien as provided in subsection (e) of this section. A trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust and is a neutral third party. While serving as trustee in the foreclosure proceeding, a trustee may not advocate for the managing entity or the holder of the lien or the owner of the timeshare subject to foreclosure. The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the timeshare trustee foreclosure procedure, whether or not a sale is held. The trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15. The trustee may use a third party to conduct the sale on behalf of the trustee and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(2) At least 30 days prior to the day fixed for the timeshare trustee foreclosure, the trustee shall send notice by registered or certified mail, return receipt requested, or by designated delivery service pursuant to 26 U.S.C. § 7502(f)(2) with a delivery receipt requested, to the owner at the owner's known address as recorded in the books and records of the timeshare program, in lieu of personal service, and to all lienholders that received notice under subsection (e) of this section. If within 10 days following the mailing of the notice of the sale a return receipt or delivery receipt has not been received by

the trustee indicating receipt of the notice, then the trustee shall have notice published in a newspaper in the same manner as described in subsection (f) of this section.

(3) The notice of sale shall contain at least all of the following:

- a. The name and address of the owner and any junior interest holders.
- b. The legal description of the timeshare.
- c. The name and address of the trustee.
- d. A description of the default that is the basis for the judgment.
- e. The filing information for the claim of lien and judgment.
- f. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.
- g. The date, location, and starting time of the trustee's sale.
- h. The right and method by which the owner may cure the default and the right of any junior interest holder to redeem its interest up to the date the trustee issues a certificate of sale in accordance with subdivision (8) of this subsection.

(4) The trustee shall add to the amount of the judgment as costs of the sale any postage or advertising expenses incurred by the managing entity, holder of the lien, or designated trustee in foreclosing under this section.

(5) The managing entity, holder of the lien, and any other person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(6) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of postponed sale shall be given in accordance with subdivision (2) of this subsection.

(7) The highest bidder at the sale shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the managing entity or holder of the lien is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale, as described in subdivision (3) of this subsection.

(8) On the date of sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred. The certificate shall include the time, location, and date of the sale, that the timeshare was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate shall be mailed by first-class mail to the owner's address as recorded in the books and records of the timeshare program. Upon issuance of a certificate of sale, all rights of redemption are foreclosed and shall terminate.

(m) A sale conducted under this section releases the owner from liability for all amounts secured by the lien. The managing entity or holder of the lien have no right to a deficiency judgment against the owner after a sale of the owner's timeshare under this section.

(n) Within 10 calendar days after the trustee conducts a sale under this section, the trustee shall execute and file with the clerk of superior court, a certificate of compliance that has been signed and sworn to or affirmed before a notary public. In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the managing entity or holder of the lien as to the facts and circumstances of default and failure to cure the default. The certificate of compliance shall contain the following:

- (1) A confirmation of delivery of the claim of lien and notice of timeshare trustee foreclosure.
- (2) A statement that the default was not cured prior to the sale, that the trustee did not receive any written objection under subsection (e) of this section, and that the timeshare was not redeemed under sub-subdivision h. of subdivision (3) of subsection (l) of this section.
- (3) A confirmation that the notice of sale was delivered to the owner or published prior to the sale.
- (o) At least 10 calendar days after a sale conducted under this section, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the highest bidder, the trustee shall issue a trustee's deed to the highest bidder and record the trustee's deed in the public records of the county in which the timeshare is located. The trustee's deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, and a legal description of the timeshare. The trustee's deed shall contain no warranties of title from the trustee. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare that the former owner had, or had the power to convey, at the time of the recording of the claim of lien, together with all rights, title, and interest that the former owner or the owner's successors in interest acquired after the recording of the claim of lien.
- (p) The trustee shall apply the proceeds of the sale as follows:
- (1) To the expenses of the sale, including compensation of the trustee in accordance with this section.
- (2) To the amount owed and set forth in the notice of sale.
- (3) If there are junior interest holders, the trustee may pay the surplus to the clerk of superior court, naming the competing junior interest holders, and the payment to the clerk discharges the managing entity, holder of the lien, or trustee from liability to the extent of the amount paid. A special proceeding may be instituted in accordance with G.S. 45-21.32 to determine who may be entitled to the surplus.
- (4) If there are no junior interest holders, or if all junior interest holders have been paid, any surplus shall be paid to the former owner.
- (q) The certificate of compliance and the trustee's deed together are presumptive evidence of the truth of the matters set forth in them, and action to set aside the sale and void the trustee's deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value. The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to re-foreclose the assessment lien in order to correct the irregularity and becomes entitled to an action de novo for foreclosure of such assessment lien. Any subsequent re-foreclosure required to correct an irregularity may be conducted under G.S. 93A-62.1.
- (r) The managing entity, holder of the lien, or designated trustee may combine the claim of lien, certificate, notice of sale, certificate of compliance, published notices and other documents part of the timeshare trustee foreclosure procedure against timeshares of different owners if both of the following criteria are met:
- (1) All timeshares are part of the same timeshare project.
- (2) The declaration giving rise to the right of the managing entity to collect assessments creates default and remedy obligations that are substantially the same for each owner named in the timeshare trustee foreclosure proceeding.
- (s) A claim of lien securing a debt consisting solely of fines imposed by the managing entity, interest on unpaid fines, or attorneys' fees incurred by the managing entity solely associated with fines imposed by the managing entity may be enforced by judicial foreclosure.

as provided in Article 29A of Chapter 1 of the General Statutes. In addition, any claim of lien securing a debt consisting solely of service, collection, consulting, or administration fees may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes.

(t) All foreclosure proceedings commenced by a managing entity or the holder of the lien before March 1, 2026, and all sales and transfers of real property as part of those proceedings pursuant to the provisions of this Chapter, Chapter 47A of the General Statutes, or provisions contained in a timeshare declaration are declared to be valid unless an action to set aside the foreclosure is commenced on or before March 1, 2026, or within one year after the date of the foreclosure sale, whichever occurs last."

SECTION 3. This act is effective when it becomes law and applies to claims of lien filed on or after that date.