

§ 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. (2025-75, s. 2.)