

## NORTH CAROLINA ADOPTS CHANGES TO HOA STATUTES & SOLAR COLLECTORS

Henry W. Jones, Jr. Esq.                      Hope Derby Carmichael, Esq.  
Jordan Price Wall Gray Jones & Carlton    <http://www.jordanprice.com/index.php>  
Telephone: (919) 828-2501  
*(Mr. Jones is the North Carolina LAC Vice Chair)*

### Background

Effective October 1, 2009, townhome communities, planned unit developments and condominiums in North Carolina will be subject to several statutory changes in both the Planned Community Act ([Chapter 47E](#)) and the Condominium Act ([Chapter 47C](#)). **These changes in the law will require some additional procedures on the part of the home owner association (HOA) and on the attorney for the collection of delinquent assessments.**

The General Assembly also enacted legislative changes affecting the use of solar collector devices, but these changes will not affect the current law for any existing planned communities or condominiums --- only subdivisions or condos created after December 1, 2009.

### House Bill 806 – Changes in Notice Requirements for Delinquent Assessments and Claims of Lien

House Bill [806](#) (Ch. SL 2009-515), signed into law on August 26, 2009, was designed to ensure that all owners receive notice of the filing of a lien claim prior to the institution of foreclosure proceedings. The changes in law were born out of a few unfortunate cases where properties owned by absentee owners were sold at foreclosure sales by HOAs without the owners receiving notice of the foreclosure action or sale. This failure of notice occurred despite the fact that the owners' current mailing addresses were a matter of public record (in one instance, the absentee address was in the association's own records, but the mailing address was inexplicably changed to the property address upon referring the case to collections).

Effective October 1, 2009, an association is now required to make "reasonable and diligent efforts to ensure that its records contain the owner's current mailing address." While there are some specific requirements, this law also imposes a heightened obligation on the association to act on any information managers, board members or attorneys may have that the mailing address in the association's records is not accurate – this would include knowledge of returned mail from the post office, knowledge that the property is vacant, or knowledge that there is a tenant occupying the property rather than the owner. If any director or agent of the association is aware that the mailing address may not be correct, it is incumbent on the association to investigate to the best of its ability a possible good mailing address for the owner.

For example, for several years our office has been employing a "checklist" of address search tools when we become aware that we do not have a valid mailing address for a debtor. These include pulling a credit report, searching the public tax and real property records, a postal

search for forwarding address with the US Postal Service, an internet “people search” and search of residential telephone listings. We believe these practices were required of us as officers of the court in the prudent course of our representation, even prior to the law changes. The difference is that now an association is required to make similar inquiry prior to turning the matter over for collections to an attorney.

Obviously, while some of the methods may not be available outside the context of an attorney’s office (i.e., credit report, postal search), the public records and internet searches are accessible to everyone. One could interpret that the law now imposes an obligation on the association to search these records for a valid mailing address if it has reason to believe the address in its records is not a valid mailing address.

The first place to look is in the [county](#) property tax records where the property is located. If the mailing address on the property tax record is different than the association’s address, you **MUST** send a copy of the 15-day letter to all of the following: property address, mailing address per the association’s records AND address listed with the county tax office. The requirement for first-class mail did not change, and there is no need to send the 15-day letter by certified mail.

For a corporation or limited liability company, the association must also send the letter to the mailing address for the registered agent who is listed in the records of the NC Secretary of State (or other state of incorporation). This information is readily available online; the link for the NC Secretary of State corporate records search is: <http://www.secretary.state.nc.us/Corporations/>.

### New Requirements for the Claim of Lien Document

House Bill 806 also imposes new requirements for the claim of lien document that is filed with the Clerk of Court. Specifically, every claim of lien must now contain the following statement in boldface, capital letters, on the front page of the lien: **“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.”**

In addition, the person signing the claim of lien must sign a certificate of service, attached to the lien itself, by which that person verifies that he/she has mailed a copy of the claim of lien both by regular, first-class mail, and by either certified mail, return receipt requested, or by overnight delivery with a qualified carrier (such as Fed Ex, UPS, DHL, etc.) If using an overnight delivery service, the delivery must require a signature from the recipient. Probably the most cost effective means of delivery will be certified mail. Happily, industry members were able to convince legislators to omit any requirement that the recipient actually sign for the certified mail: the bill in its final version requires only that the lien preparer attempt that method of service. Therefore, it is important that the certified mail receipts, green cards or unclaimed returned envelopes be kept so that this evidence can be presented to the Clerk if the matter proceeds to foreclosure.

### House Bill 1387 – Solar Collectors on Residential Properties

House Bill [1387](#) (Ch. SL 2009-553), signed into law on August 28, 2009, invalidates any **new** restrictive covenants, created on or after December 1, 2009 that would prohibit the installation of solar collector devices (solar panels, receptors for solar appliances, etc.) This law does not

apply to any existing restrictions contained in declarations prior to December 1, 2009, and it does not apply in any event to multi-story “stacked” condominiums.

The law is unchanged as it pertains to existing planned communities (a law was enacted two years ago providing that planned communities may restrict solar collectors, generally, only if they would be visible from areas of common or public access, such as a street or park area). Solar collectors generally must be allowed on the rear of the house or in the back yard if only visible from select neighbors’ property.

Industry was also able to negotiate some provisions into the bill which allow for reimbursement of expenses of maintenance and/or damages incurred by condominium associations. The explanation of these provisions is very fact specific and fairly complex. Please seek qualified specific advice and information if you feel that your condominium association falls into that category.

While this law should not impact any of existing HOA clients, managers and developers, however, should be aware of these law changes as they affect new communities created on or after December 1, 2009.

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These new changes in the law represent significant procedural changes for all HOAs in North Carolina, and will impact association managers and legal counsel. Industry spent many hours this summer educating legislators about community association business and operations, and the need for effective collection methods for delinquent assessments. Consequently, members were able to narrow the focus of the legislation and thwart proposed changes which threatened to go as far as to eliminate the association’s right to foreclose.

All HOAs and management companies are encouraged to review their current practices to determine how the statutory changes will affect their association operations, and make the necessary procedural changes to remain in compliance.

*For background on this legislation and other state legislative developments and activities, go to: <http://www.cai-nc.org/Legislative-Documents~160059~10363.htm>.*