

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Master-in-Equity

Joseph M. Strickland, Master-in-Equity

Case No. 2014-CP-40-00847  
Appellate Case No. 2018-001238  
Opinion No. 27934 (Filed December 18, 2019)

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JAN 02 2020  
S.C. SUPREME COURT

Winrose Homeowners' Association, Inc. and Regime Solutions, LLC, .....Respondents,

v.

Devery A. Hale and Tina T. Hale, .....Petitioners.

**BRIEF OF PALMETTO ALLIANCE FOR BETTER  
COMMUNITIES AS *AMICUS CURIAE***

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S.C. SUPREME COURT

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## INTRODUCTION

In its decision, this Court acknowledged the HOA had the legal right to pursue collection of the debt owed, including foreclosure of the property to satisfy that debt. Op. Part IV., pg. 8. Indeed, covenants requiring the payment of maintenance assessments are contractual in nature and bind the parties to the covenants in the same manner as other contracts. *First Fed. Sav. & Loan Ass'n v. Bailey*, 316 S.C. 350, 450 S.E.2d 77 (Ct. App. 1994). But the Court noted the third-party purchaser at the judicial sale only had an opportunity to engage in questionable conduct because the HOA and its attorney chose to pursue that legal right. *Id.* at 9. The Court noted that the homeowners were only minimally in arrears on their HOA dues yet the HOA foreclosed on their \$108,000 home. In that respect, the Court stated that a foreclosure proceeding is a "last resort." The Court also stated it did not countenance the improper use of the foreclosure proceedings by the HOA, its attorney, or the third-party purchaser.

Palmetto Alliance for Better Communities is a non-profit mutual benefit corporation that promotes the common interests of companies and firms that develop residential communities, build single-family homes, manage homeowners' associations, and represent homeowners' associations. It does not contemplate pecuniary gain or profit to its members. It was formed to provide education to its members, legislators, and others related to the operation of homeowners' associations and like entities, to provide guidance, support, and advocacy in support of homeowners' associations, and to promote the health, safety and welfare of residential communities, commercial developments with associations or other like governing bodies and residential/commercial mixed development throughout South Carolina.

The foreclosure of an HOA lien for unpaid dues is potentially devastating to a homeowner. At the same time, the failure of some homeowners to pay their dues can be

devastating to the HOA as well. Palmetto Alliance very much believes (and in this brief intends to show the Court) that a properly handled foreclosure is the best remedy available in South Carolina to protect homeowners who have paid their dues while also protecting homeowners who have not paid their dues, no matter how small. In that respect, Palmetto Alliance asks the Court to define the steps an HOA must take before gaining access to the courts of South Carolina for an HOA lien foreclosure. And it asks the Court to provide specified protections for homeowners (over and above the South Carolina Rules of Civil Procedure) during the foreclosure process itself. Finally, Palmetto Alliance asks the Court to specify the ways in which the HOA and its attorney here improperly used the foreclosure proceeding and did not pursue foreclosure in the normal course, all so that HOAs can continue to have full and fair access to the remedy of foreclosure.

## ARGUMENT

### Requested Definition of “Last Resort”

The Court referred in its opinion to the remedy of foreclosure as a “last resort” but did so without specifying what that “last resort” means. Asking homeowners (those who have paid their potentially small assessments and those who have not) to pay the cost of learning what that meant through the normal judicial process of “the next case” would be contrary to the message the Court delivered in its opinion. Palmetto Alliance for Better Communities suggests that the Court can exercise powers similar to those former Chief Justice Toal exercised in Administrative Order 2009-05-22-01 (involving foreclosures of residential mortgages) to require HOAs to allege in a foreclosure complaint that specified steps have been taken before suit is filed.

*Requested New Notice Requirements*

Palmetto Alliance for Better Communities asks the Court to require the following to be attached to a complaint for foreclosure of a homeowners' association lien:

- a) an invoice for the dues sought to be collected;
- b) a past-due reminder notice dated at least 35 days later;
- c) a warning letter dated at least 10 days later stating that if the dues are not paid within 14 days, (i) the matter will be turned over to an attorney to record a notice of lien and (ii) the homeowners' mortgagee of record will be notified of the default if the dues are not paid within so many days<sup>1</sup>. The letter must warn the homeowner that the costs of collection will be added to the delinquency and the attorney will be asked to file a notice of lien. The warning letter must also explain the anticipated costs of collection (including

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<sup>1</sup> The filing of a foreclosure lawsuit based on default of lien-enforceable HOA dues can trigger a default under a standard Fannie Mae/Freddie Mac mortgage. (See bottom of Page 8 of attached standard-form Freddie Mac South Carolina Single Family Fannie Mae/Freddie Mac Uniform Instrument, Form 3041 1/01: "Borrower shall be in default if any action or proceeding, whether civil or criminal is begun that, in Lenders' judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such default...."). The advantage of requiring the HOA to give the mortgagee of record notice of intent to turn a collection over to counsel to foreclose (rather than waiting to have foreclosure counsel give the notice) is to avoid the HOA (and therefore the delinquent homeowner) from having to incur attorney's fees.

attorney's fees, filing fees, and service-of-process fees), and it must warn the homeowner of the possibility of losing his home at a judicial sale; and

- d) A letter from the HOA's lawyer sending a notice of lien and stating that foreclosure proceedings may be commenced if the dues and itemized collection costs are not paid within ten days.

In addition, if any party (homeowner or not) defaults, Palmetto Alliance asks the Court<sup>2</sup> to require counsel to serve an affidavit of default on all parties. If counsel seeks an order of reference, counsel must serve the motion on all parties, whether they have appeared in the action or not. Counsel must serve timely notice of all hearings on all parties, even if they are in default. Counsel (in addition to the clerk) must promptly serve all parties with any order entered in the case. Counsel (in addition to the clerk) must serve timely notice of the sale on all parties. Counsel must promptly serve the report on sale on all parties.

*Requested New Right of Redemption*

Palmetto Alliance for Better Communities also suggests the Court require that any order foreclosing an HOA lien state that the homeowner has 30 days from entry of a report on sale to redeem his equity in the property.

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<sup>2</sup> Of course, HOAs could instruct their counsel to take these steps regardless of an order from this Court, but homeowners or trial courts could conclude that these steps are unnecessary and therefore the expenses associated with taking them, while minor, were not reasonably incurred. Palmetto Alliance asserts these are reasonable steps and suggests that now is a much better time for the Court to determine their reasonableness than in the next HOA foreclosure case to reach this level.

### *Improprieties in the Foreclosure Process*

Finally, Palmetto Alliance for Better Communities remains concerned with the Court's statement that the HOA and its attorney improperly used the foreclosure process and that they did not pursue foreclosure in the normal course. Palmetto Alliance asks the Court to specify the conduct so that HOAs can be so advised and all be protected.

### **Justification for Continued Access to the Remedy of Foreclosure for HOA Liens**

Since their beginnings in the 1950s homeowners' associations in South Carolina have begun taking over some of the functions of government. Those functions include maintaining landscaping, keeping roadways drained, providing lighting and other utilities, removing refuse, enforcing land-use regulations, providing recreational opportunities, and so forth, all for the common good. While governments assess "taxes," homeowner's associations assess "dues" to pay for those services. HOAs are similar to governments in that they are non-profit. In fact, they are cooperatives in that their members share resources and the costs of obtaining those resources. And when one homeowner does not pay his dues, the burden of paying his or her share falls on those who have already paid theirs.

As long as there have been taxes, there have been those who have been reluctant or unable to pay them. Similarly, as long as there have been HOA dues, there have been those who have been reluctant or unable to pay them.

Anticipating collection challenges, both governments and homeowners' associations are empowered with certain enforcement mechanisms.

In South Carolina a municipality will assess taxes, issue tax notices, send out past-due notices, record and send out tax liens, and foreclose those liens. The General Assembly then

affords the taxpayer a one-year right of redemption after the sale. S.C. Code Ann. § 12-51-90. In South Carolina, an HOA will assess dues and enforce the obligation to pay those dues with liens and, if necessary, foreclose the property to satisfy the debt. As noted above, this Court acknowledged that right on Page 8 of its opinion. Palmetto Alliance is not aware of a statutory right of redemption in HOA lien-foreclosure cases, but Palmetto Alliance feels one is especially important in HOA foreclosures.

As a nonprofit cooperative, a homeowners' association does not stand to *profit* from collecting dues. The best it can do is collect its dues and cost of collection so that its dues-paying members don't have to pay twice. A homeowners' association should treat all of its members fairly -- those who have paid their dues and those who, for whatever reason, have not.

Palmetto Alliance has found that normally the smaller the community, the higher the assessments are and the more important collecting all of the assessments becomes. *See* Affidavit of M. Judson Smith, attached. The point where this might start to diminish is probably around 100 lots, but if the delinquency rate is significant, this can affect a 250-lot community as well. *Id.*

Palmetto Alliance has also found that without the remedy of foreclosure being available, many communities can fall into a virtually unending downward spiral that affects the amount of dues that those in the community who do pay, must pay. *Id.* It could easily double in a starter-home community, even with a large number of lots. *Id.* Palmetto Alliance has found that for years associations suffered with the "file a lien and they will have to pay when they sell the house" plan. *Id.* Smith avers that more recently many homeowners have lost concern with their liens, so that now, dues can remain in collection for ten to twenty years. Of course, no one, especially an HOA, wants to reach the level of legal action, but the fear of foreclosure is the bottle cap that finally encourages delinquent homeowners to pay their fair share of the cost of

their common expenses. If the bottle cap is removed, so is the incentive to pay. Fewer homeowners pay their dues, then fewer pay, and the entire community becomes demoralized and a drain on all citizens of the entire county. *Id.*

Palmetto Alliance has also found that obtaining money judgments (and collecting them through supplemental proceedings) is expensive and especially so with small amounts. And a money judgment does not pay this year's common expenses. As a result, those who did pay their dues have to cover for those who have not, even if the HOA has a judgment. And as the HOA has to pay a lawyer to try to collect a small judgment, the HOA spends money on lawyers that it would be better off spending on the community. Hence the downward spiral continues despite the HOA's recovery of a money judgment.

As Mr. Smith states in his affidavit, it is the risk of losing the property in a foreclosure sale that actually encourages many homeowners to pay their fair share of common expenses.

Ella C. Calvert serves on the board of an HOA in the Northeast section of Richland County. She expresses similar concerns in her affidavit, and she describes her HOA's experiences with both the remedy of foreclosures and of magistrate's court money judgments.

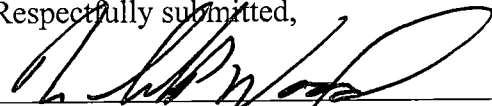
Finally, we would point out a couple of ways access to the foreclosure process for HOAs is even more important than access for others:

- a) Unlike a mortgage lender, an HOA is generally not able to reject a purchaser based on creditworthiness; and
- b) Unlike a water company, a credit-card company, or a shoe repairman, an HOA cannot cut off credit or new services while it is collecting an unpaid debt.

## CONCLUSION

Palmetto Alliance for Better Communities asks the Court to define the steps an HOA must take before gaining access to the courts of South Carolina for an HOA lien foreclosure. And it asks the Court to provide specified protections for homeowners (over and above the South Carolina Rules of Civil Procedure) during the foreclosure process itself. Finally, Palmetto Alliance asks the Court to specify the ways in which the HOA and its attorney here improperly used the foreclosure proceeding and did not pursue foreclosure in the normal course, all so that HOAs can continue to have full and fair access to the remedy of foreclosure.

Respectfully submitted,



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January 2, 2020

2009-05-22-01

# The Supreme Court of South Carolina

RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)

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## ADMINISTRATIVE ORDER

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On March 4, 2009, the United States Treasury Department (Treasury) issued Guidelines on mortgage loan modifications under the Home Affordable Modification Program (HMP) for residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).[1] The HMP is part of the Making Home Affordable Program (MHAP).

Subsequently on April 6, 2009, Treasury issued Supplemental Directive 09-01,[2] which provided additional guidance to servicers for adoption and implementation of the HMP for residential mortgage loans that are not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. For this latter category, the HMP is only applicable if the servicer has agreed to participate in the HMP.[3]

If applicable, the HMP requires the temporary suspension of foreclosure actions.[4] The HMP is scheduled to expire on December 31, 2012, and has no application to a mortgage originated after January 1, 2009.

On May 4, 2009, I issued a temporary restraining order (TRO) based on a motion filed by Fannie Mae.[5] This TRO had to be issued on an ex parte basis, and it was anticipated that it would be replaced by a subsequent order.

To insure that eligible homeowners have been afforded the benefits available under the HMP, the procedures for handling issues relating to the HMP are handled uniformly throughout the State, and mortgage foreclosure actions are not unnecessarily dismissed or delayed while HMP issues are resolved, I direct the following:

(1) Actions Filed After May 4, 2009. In all mortgage foreclosure actions filed after May 4, 2009, the complaint (or amended complaint) seeking foreclosure shall contain "a short and plain statement of the facts"[6] regarding the applicability of the HMP to the matter. For mortgages involving commercial property, the complaint may simply allege that the property is commercial and that the HMP is inapplicable.[7]

For mortgages involving residential property, the complaint shall state if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the complaint shall state the facts showing that the loan is not subject to modification under the HMP,[8] or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification.[9] If these allegations are contested by the answer or the judge allows the issue to become contested at some later stage of the proceeding, any dispute regarding the eligibility of the mortgage loan for modification under the HMP or the satisfaction of the requirements of the HMP if it applies, shall be resolved like any other contested issue in a mortgage foreclosure case. Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

(2) Actions Pending on May 4, 2009. In all mortgage foreclosure actions pending on May 4, 2009, the party seeking foreclosure should have served the affidavit required by the TRO by May 15, 2009. If the affidavit was timely served under the TRO, any counter affidavit asserting that the loan is subject to modification under the HMP or that the requirements of the HMP have not been meet, should be served by May 22, 2009.

If the party seeking a foreclosure did not serve the affidavit by May 15, 2009, as required by the TRO, the matter will be stayed until the party seeking foreclosure serves and files an affidavit regarding the applicability of the HMP to the matter. For mortgages involving commercial property, the affidavit may simply allege that the property is commercial and that the HMP is inapplicable.

For residential mortgages, the affidavit shall state if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the affidavit shall state the facts showing that the mortgage loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification. In the alternative, the affidavit may concede that the matter should be stayed until the HMP modification process is completed. If the affidavit is not served within ninety (90) days of the date of this order, the foreclosure action may be dismissed. If the affidavit is served, any other party to the action shall have ten (10) days to serve a counter affidavit.

A copy of any affidavit or any counter affidavit (whether served before or after this order), along with proof of service, shall immediately be filed with the court where the action is pending.

The judge shall consider the affidavit and any counter affidavit that may be filed to determine if there is any contested issue that must be resolved regarding the eligibility of the loan for modification under the HMP or satisfaction of the requirements of the HMP if it applies. If so as to either, the judge shall resolve this issue like any other contested issue in a mortgage foreclosure action. If a counter affidavit is not timely served, the determination of whether there are HMP issues which need to be resolved before foreclosure is ordered or the sale is commenced shall be based on the affidavit alone unless the judge allows the late service and filing of the counter affidavit or allows the issue to become contested at some later stage of the proceeding. Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

(3) Determination that the HMP is Applicable But the HMP Process Has Not Been Completed. If a judge determines that the HMP is applicable but that the process to determine if a modification will be made under the HMP has not been completed, the foreclosure action shall not be dismissed but shall be stayed until the HMP process is completed (including any trial period before a modification becomes effective). If the action is stayed, the party seeking foreclosure will advise the court of the status of the matter every thirty (30) days; the failure to do so may result in dismissal of the action. If the loan is modified under the HMP, the parties shall immediately notify the judge so that the mortgage foreclosure action can be dismissed. Nothing in this order shall be construed as preventing the party seeking foreclosure from voluntarily dismissing the foreclosure action.[10]

(4) Determination that Mortgage Loan is Not Subject to Modification under the HMP. If a judge determines that the HMP is either inapplicable to the mortgage loan or that the HMP requirements have been satisfied without resulting in a modification, the foreclosure action may continue. This includes the consummation of any sales conducted on or prior to May 4, 2009.

(5) TRO Rescinded. The TRO previously issued by me on May 4, 2009, is hereby rescinded. Instead, the provisions of this Administrative Order shall govern foreclosure actions potentially affected by the HMP.[11]

(6) Judicial Sales in Mortgage Foreclosure Cases. Nothing in this order shall be construed as preventing a judge from setting additional sales days under S.C. Code Ann. §15-39-680 (2005). Further, where an order of foreclosure was issued on or before May 4, 2009, nothing in this order shall be construed as preventing the judge from directing the advertising of the property for sale so long as any issue regarding the HMP is resolved before the sale occurs.

For the purpose of this order, the term "judge" shall include a circuit court judge, master-in-equity and special referee. If this order requires service of an affidavit or counter affidavit upon a party, service shall be accomplished as provided by Rule 5(b)(1), SCRPC, and service shall be made on all parties to the action.

IT IS SO ORDERED.

s/Jean Hoefler Toal  
Jean H. Toal  
Chief Justice

Columbia, South Carolina  
May 22, 2009

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[1] The guidelines are available at [www.ustreas.gov/press/releases/reports/modification\\_program\\_guidelines.pdf](http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf). In addition to contacting the servicer to determine if the loan is owned or guaranteed by Fannie Mae and Freddie Mac, homeowners can also use the links on the following website to determine if their loans are owned or guaranteed by Fannie Mae or Freddie Mac:  
[http://makinghomeaffordable.gov/loan\\_lookup.html](http://makinghomeaffordable.gov/loan_lookup.html).

[2] Available at [www.hmpadmin.com/docs/Supplemental\\_Directive\\_09-01.pdf](http://www.hmpadmin.com/docs/Supplemental_Directive_09-01.pdf).

[3] A list of those servicers who have agreed to participate may be found at [http://makinghomeaffordable.gov/contact\\_servicer.html](http://makinghomeaffordable.gov/contact_servicer.html).

[4] The Guidelines state:

Any foreclosure action will be temporarily suspended during the trial period, or while borrowers are considered for alternative foreclosure prevention options. In the event that the Home Affordable Modification or alternative foreclosure prevention options fail, the foreclosure action may be resumed.

In relevant part, the Supplemental Directive states:

To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for the HMP, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program and, if eligible, an offer to participate in the HMP has been made. Servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for the HMP, including in-person contacts at the servicer's discretion. Servicers must not conduct foreclosure sales on loans previously referred to foreclosure or refer new loans to foreclosure during the 30-day period that the borrower has to submit documents evidencing an intent to accept the Trial Period Plan offer. Except as noted herein, any foreclosure sale will be suspended for the duration of the Trial Period Plan, including any period of time between the borrower's execution of the Trial Period Plan and the Trial Period Plan effective date.

[5] This order and the motion are available at [www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=526](http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=526).

[6] Rule 8(a), SCRCP.

[7] For example, the complaint could simply state: "Since this foreclosure action involves a mortgage on a commercial office building, the Home Affordable Modification Program is inapplicable."

[8] Despite the fact that the loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or the servicer is participating in the HMP, there are numerous other requirements that may prevent the loan from being eligible for modification under HMP. For example, modification under HMP is not available if the property is not a single family 1 - 4 unit property, the property is not the primary residence of the homeowner, the mortgage originated after January 1, 2009, the unpaid principal balance exceeds certain specified amounts, the property is vacant or condemned, or the loan has been previously modified under the HMP. For specifics on these and other requirements, the Guidelines and Supplemental Directive should be consulted. For homeowners, there is an interactive website to assist them in determining if the mortgage loan is potentially subject to modification under the HMP: [http://makinghomeaffordable.gov/modification\\_eligibility.html](http://makinghomeaffordable.gov/modification_eligibility.html).

[9] If the HMP is applicable and the modification process has not been completed, the action should not be filed.

[10] I am concerned that there may be a significant number of actions that may be stayed while the HMP process is completed. I expect the party seeking foreclosure to complete the process and make a determination if the mortgage loan will be modified in a prompt and diligent manner. If this is not done and the number of cases stayed reaches an unacceptable level, this order may be modified to allow for the dismissal of actions which are stayed and not resolved in a reasonable period of time.

[11] In response to the TRO, six law firms (the Scott Law Firm, P.A.; Rogers, Townsend, Thomas, P.C.; the Finkel Law Firm, L.L.C.; Fleming & Whitt, P.A.; the Korn Law Firm, P.A.; and the Weston Adams Law Firm) have filed a motion seeking a state-wide scheduling order. The South Carolina Department of Consumer Affairs, South Carolina Legal Services, the law firm of Harrison & Radeker, P.A., and the South Carolina Appleseed Legal Justice Center have filed returns to the motion. In addition, the six law firms have filed a reply and an amended reply. These filings have been considered in issuing this order.

In its return, Consumer Affairs points out that, in addition to HMP, other parts of the MHAP may provide relief to homeowners. This includes Fannie Mae and Freddie Mac allowing refinancing of mortgage loans that they own or that they placed in mortgage backed securities where homeowners are current on their loans, Short Sales/Deeds-in-Lieu Program and the Home Price Decline Protection Incentives. While these programs are beyond the scope of this order, the following links provide information about those programs:

[www.freddie.mac.com/sell/factsheets/relief\\_refi.html](http://www.freddie.mac.com/sell/factsheets/relief_refi.html);

[www.efanniemae.com/sf/mha/mharefi/pdf/refinancefaqs.pdf](http://www.efanniemae.com/sf/mha/mharefi/pdf/refinancefaqs.pdf);

[http://makinghomeaffordable.gov/refinance\\_eligibility.html](http://makinghomeaffordable.gov/refinance_eligibility.html);

[www.treas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf](http://www.treas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf).

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## MORTGAGE

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated \_\_\_\_\_, together with all Riders to this document.

(B) "Borrower" is \_\_\_\_\_. Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is \_\_\_\_\_. Lender is a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Lender's address is \_\_\_\_\_. Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated \_\_\_\_\_. The Note states that Borrower owes Lender \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than \_\_\_\_\_.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider        |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |   |

(H) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) **"Escrow Items"** means those items that are described in Section 3.

(L) **"Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) **"Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) **"Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described

property located in the \_\_\_\_\_ of  
[Type of Recording Jurisdiction]  
\_\_\_\_\_  
[Name of Recording Jurisdiction]

which currently has the address of \_\_\_\_\_  
[Street]  
\_\_\_\_\_, South Carolina \_\_\_\_\_ ("Property Address"):  
[City] [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is

drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower

shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste

on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase**

the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of

the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the

charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not

limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with

the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph.

The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

**23. Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

**25. Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

**26. Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

AFFIDAVIT OF M. JUDSON SMITH

PERSONALLY APPEARED BEFORE ME M. JUDSON SMITH, who, after being duly sworn, deposes and says that:

1. My name is M. Judson Smith. I serve on the board of directors of Palmetto Alliance for Better Communities.
2. Palmetto Alliance for Better Communities is a non-profit mutual benefit corporation that promotes the common interests of companies and firms that develop residential communities, build single-family homes, manage homeowners' associations, and represent homeowners' associations.
3. The foreclosure of a homeowners' association lien for unpaid dues is potentially devastating to a homeowner, but the failure of some homeowners to pay their dues can be devastating to the HOA as well. A properly handled foreclosure is the best remedy available in South Carolina to protect homeowners who have paid their dues while also protecting homeowners who have not paid their dues, no matter how small.
4. Normally, the smaller the community, the higher the assessments are and the more important collecting all of the assessments becomes. The point where this might start to diminish is probably around 100 lots, but if the delinquency rate is significant, this can affect a 250-lot community as well.
5. The common approach to the non-payment of dues is for the HOA to file a lien so the homeowners will have to pay their dues when they sell the house. However many homeowners

have lost concern with their liens. so that now, dues can remain in collection for ten to twenty years, only to be collected upon sale of the property.

6. After filing a lien, the HOA is still forced to try to obtain a money judgment and collect it through supplemental proceedings, which is expensive especially with small amounts. Money judgments do not pay this year's common expenses. As a result, homeowners who are current on their dues have to cover for those who have not, regardless of whether a judgment exists.

7. Requiring associations to file liens and hire lawyers to try to collect a small judgment still puts a burden on the HOA to spend money on legal fees and costs that it would be better off spending on the community.

8. Filing liens and attempting to collect on those liens puts a burden on the HOA and the current homeowner's who have paid their dues making this a never ending cycle. The only incentive for delinquent homeowners to pay the assessments is the risk of foreclosure and the potential loss of the property in a foreclosure sale. This is what actually encourages homeowners to pay their fair share of common expenses.

\_\_\_\_\_  
M. Judson Smith

Sworn to before me this \_\_\_\_\_ day  
of January, 2020

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

AFFIDAVIT OF M. JUDSON SMITH

PERSONALLY APPEARED BEFORE ME M. JUDSON SMITH, who, after being duly sworn, deposes and says that:

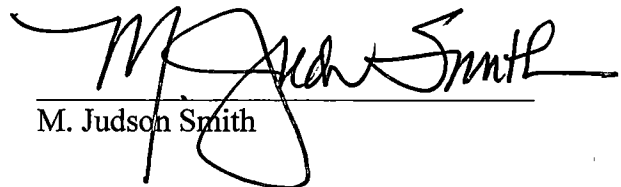
1. My name is M. Judson Smith. I serve on the board of directors of Palmetto Alliance for Better Communities.
2. Palmetto Alliance for Better Communities is a non-profit mutual benefit corporation that promotes the common interests of homeowners' associations and companies and firms that develop residential communities, build single-family homes, manage homeowners' associations, and represent homeowners' associations. Contributors to Palmetto Alliance for Better Communities manage over 400 homeowners' associations in South Carolina.
3. The foreclosure of a homeowners' association lien for unpaid dues is potentially devastating to a homeowner, but the failure of some homeowners to pay their dues can be devastating to the HOA as well. A properly handled foreclosure is the best remedy available in South Carolina to protect homeowners who have paid their dues while also protecting homeowners who have not paid their dues, no matter how small.
4. Normally, the smaller the community, the higher the assessments are and the more important collecting all of the assessments becomes. The point where this might start to diminish is probably around 100 lots, but if the delinquency rate is significant, this can affect a 250+-lot community as well.
5. The common approach to the non-payment of dues has been for the HOA to file a lien so the homeowners will have to pay their dues when they sell the house. However, many homeowners

have lost concern with their liens, so that now, dues can remain in collection for ten to twenty years, only to be collected upon sale of the property.

6. An alternative to foreclosure is for the HOA to obtain a money judgment and collect it through supplemental proceedings. But supplemental proceedings are expensive, especially with small amounts. Also, money judgments do not pay this year's common expenses. As a result, homeowners who are current on their dues have to cover for those who have not, regardless of whether a judgment exists. If fewer homeowners pay their dues, then others frequently choose not to meet this obligation, and it becomes a downward spiral. Finally an entire community can become demoralized, property values can drop, and the community can become a drain on all citizens of the county.

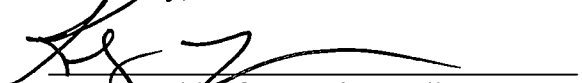
7. The only incentive for some delinquent homeowners to pay their assessments is the risk of foreclosure and the potential loss of the property in a foreclosure sale. No one, especially an HOA, wants to reach the level of legal action (and no HOA ever wants to own a house), but the risk of foreclosure is frequently the bottle cap that finally encourages delinquent homeowners to pay their fair share of the cost of their common expenses. If the bottle cap is removed, so is the incentive to pay, and delinquency rates could triple or even quadruple in a community.

8. The remedy of foreclosure needs to remain for the collection of even small amounts of HOA dues.

  
M. Judson Smith

Sworn to before me this 2<sup>nd</sup> day

of January, 2020

  
Notary Public for South Carolina  
My Commission Expires: 8/20/25

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

AFFIDAVIT OF ELLA C. CALVERT

PERSONALLY APPEARED BEFORE ME ELLA C. CALVERT, who, after being duly sworn, deposes and says that:

1. My name is Ella Calvert. I serve on the board of directors of Sterling Hills Homeowners' Association. I served on the board back in 2005.
2. Sterling Hills is a community in the Northeast section of Richland County. I have lived in our community since 2002. Our homes are modest and sell for about \$90,000 to \$140,000. We are governed by a declaration of covenants conditions and restrictions. We have common areas, and our board is allowed to assess our homeowners for dues to pay our common expenses.
3. In 2004, 70% of our members were delinquent in paying their dues. Because so few members were paying their dues, the board was not able to provide irrigation, insurance, or lighting for our common areas, we could not keep our detention pond maintained, and we could not pay the property taxes on our common areas. The burden of taking care of our common areas (to the extent we did) fell on the 30% of us who were paying our dues. That was demoralizing, and it made our community less desirable to the point that our property values declined. Yet with declining property values, declining morale, and fewer services we could offer, we still had to raise our dues from \$120/year to \$140/year.
4. We did what we could to encourage our members to bring their dues current. In fact, we brought some suits in magistrate's court. But that did not help much.
5. Getting simple money judgments did not do much to encourage homeowners to pay their dues. I vividly recall one in particular where we got a judgment (not for dues but for something

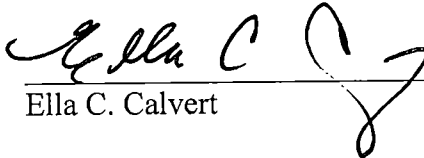
else), but the homeowner (a former board member) knew of the HOA's struggles and took advantage of the fact that judgment liens are only good for ten years. He never paid the judgment.

6. Finally, in 2007 we hired a law firm to file foreclosures for us. We did not like having to do that, but it worked! Word got out quickly in our community that we were serious about collecting dues, and the number of our delinquencies decreased tremendously. Finally, almost all of our neighbors were paying their fair share of our common expenses.

7. Our little community of about 175 homes is more neighborly now. We know our responsibilities, and we honor them as best as we can. The old process of suing our neighbors in magistrate's court for a money judgment that we might not be able to collect didn't work, and the new process – the foreclosure process - is much better.

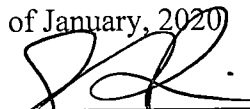
8. Even the foreclosure process is not perfect for us. But it is the best process we know of.

9. I was distressed when I heard about the Supreme Court's worries about the foreclosure process for homeowners' associations. I agree we need a clear foreclosure process that encourages homeowners to pay their dues but at the same time is fair both to those who have paid their dues and to those who have not.

  
Ella C. Calvert

Sworn to before me this 2 day

of January, 2020

  
Notary Public for South Carolina  
My Commission Expires: March 12, 2029

