

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 806*
Committee Substitute Favorable 4/30/09
PROPOSED COMMITTEE SUBSTITUTE H806-PCS50677-RO-32

Short Title: Notice on Liens for HOA Assessments.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"§ 47F-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

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

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

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



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

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

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

18 (e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot
19 owner is notified in writing of the association's intent to seek payment of attorneys' fees and
20 court costs. The notice must be sent by first-class mail to the property address and, if different,
21 to the mailing address for the lot owner in the association's records. The association must make
22 reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing
23 address. The notice shall set out the outstanding balance due as of the date of the notice and
24 state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the
25 outstanding balance without the attorneys' fees and court costs. If the lot owner pays the
26 outstanding balance within this period, then the lot owner shall have no obligation to pay
27 attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to
28 contact a representative of the association to discuss a payment schedule for the outstanding
29 balance as provided in subsection (e2) of this section and shall provide the name and telephone
30 number of the representative.

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

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

44 (g) A claim of lien shall set forth the name and address of the association, the name of
45 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
46 amount of the lien claimed. The first page of the claim of lien shall contain the following
47 statement in print that is in boldface, capital letters, and no smaller than the largest print used
48 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST
49 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS
50 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR
51 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA

1 LAW. The claim of lien must be sent by first-class mail to the property address, and if
2 different, to the mailing address of the lot owner. The association must make reasonable and
3 diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The
4 person signing the claim of lien on behalf of the association shall attach to and file with the
5 claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner
6 received actual notice."

7 **SECTION 2.** G.S. 47C-3-116 reads as rewritten:

8 "**§ 47C-3-116. Lien for assessments.**

9 (a) Any assessment levied against a unit remaining unpaid for a period of 30 days or
10 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
11 the clerk of superior court of the county in which the unit is located in the manner provided
12 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
13 to ensure that its records contain the lot owner's current mailing address. Unless the declaration
14 otherwise provides, fees, charges, late charges and other charges imposed pursuant to
15 G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under
16 this section. Except as provided in subsections (a1) and (a2) of this section, the association's
17 lien may be foreclosed in like manner as a mortgage on real estate under power of sale under
18 Article 2A of Chapter 45 of the General Statutes.

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

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

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

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

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

39 (e) A judgment, decree, or order in any action brought under this section shall include
40 costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest
41 the collection of debt and enforcement of a lien after the expiration of the 15-day period
42 following notice as required in subsection (e1) of this section, then reasonable attorneys' fees
43 shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses
44 incurred. The collection of debt and enforcement of a lien remain uncontested as long as the
45 unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as
46 to the amount or validity of the debt and lien asserted or the association's right to collect the
47 debt and enforce the lien as provided in this section. The attorneys' fee limitation in this
48 subsection shall not apply to judicial foreclosures or proceedings authorized under subsection
49 (d) of this section or G.S. 47C-4-117.

50 (e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit
51 owner is notified in writing of the association's intent to seek payment of attorneys' fees and

1 court costs. The notice must be sent by first-class mail to the property address and, if different,
2 to the mailing address for the unit owner in the association's records. The association must
3 make reasonable and diligent efforts to ensure that its records contain the lot owner's current
4 mailing address. The notice shall set out the outstanding balance due as of the date of the notice
5 and state that the unit owner has 15 days from the mailing of the notice by first-class mail to
6 pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays
7 the outstanding balance within this period, then the unit owner shall have no obligation to pay
8 attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to
9 contact a representative of the association to discuss a payment schedule for the outstanding
10 balance as provided in subsection (e2) of this section and shall provide the name and telephone
11 number of the representative.

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

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

25 (g) A claim of lien shall set forth the name and address of the association, the name of
26 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
27 amount of the lien claimed. The first page of the claim of lien shall contain the following
28 statement in print that is in boldface, capital letters, and no smaller than the largest print used
29 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST
30 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS
31 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR
32 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA
33 LAW.' The claim of lien must be sent by first-class mail to the property address, and if
34 different, to the mailing address of the lot owner. The association must make reasonable and
35 diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The
36 person signing the claim of lien on behalf of the association shall attach to and file with the
37 claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner
38 received actual notice."

39 **SECTION 3.** This act becomes effective October 1, 2009, and applies to claims of
40 lien filed on or after that date.