

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 806\*  
Committee Substitute Favorable 4/30/09  
Committee Substitute #2 Favorable 5/11/09  
PROPOSED SENATE COMMITTEE SUBSTITUTE H806-PCS70477-RW-66

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. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. 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.



\* H 8 0 6 - P C S 7 0 4 7 7 - R W - 6 6 \*

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

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

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

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

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

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

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

50 (g) A claim of lien shall set forth the name and address of the association, the name of  
51 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the

1 amount of the lien claimed. The first page of the claim of lien shall contain the following  
2 statement in print that is in boldface, capital letters and no smaller than the largest print used  
3 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST  
4 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS  
5 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR  
6 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA  
7 LAW.' The person signing the claim of lien on behalf of the association shall attach to and file  
8 with the claim of lien a certificate of service attesting to the attempt of service on the record  
9 owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of  
10 a copy of a summons and a complaint. If the actual service is not achieved, the person signing  
11 the claim of lien on behalf of the association shall be deemed to have met the requirements of  
12 this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1,  
13 Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail,  
14 postage prepaid to the physical address of the lot and the lot owner's address of record with the  
15 association, and, if different, to the address for the lot owner shown on the county tax records  
16 and the county real property records for the lot. In the event that the owner of record is not a  
17 natural person, and actual service is not achieved, the person signing the claim of lien on behalf  
18 of the association shall be deemed to have met the requirements of this subsection if service has  
19 been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through  
20 G.S. 1A-1, Rule 4(j)(9)."

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

22 **"§ 47C-3-116. Lien for assessments.**

23 (a) Any assessment levied against a unit remaining unpaid for a period of 30 days or  
24 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of  
25 the clerk of superior court of the county in which the unit is located in the manner provided  
26 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts  
27 to ensure that its records contain the unit owner's current mailing address. No fewer than 15  
28 days prior to filing the lien, the association shall mail a statement of the assessment amount due  
29 by first-class mail to the physical address of the unit and the unit owner's address of record with  
30 the association, and, if different, to the address for the unit owner shown on the county tax  
31 records and the county real property records for the unit. If the unit owner is a corporation, the  
32 statement shall also be sent by first-class mail to the mailing address of the registered agent for  
33 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other  
34 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are  
35 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)  
36 of this section, the association's lien may be foreclosed in like manner as a mortgage on real  
37 estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

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

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

47 (b) The lien under this section is prior to all other liens and encumbrances on a unit  
48 except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or  
49 deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of  
50 superior court, and (ii) liens for real estate taxes and other governmental assessments or charges

1 against the unit. This subsection does not affect the priority of mechanics' or materialmen's  
2 liens.

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

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

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

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

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

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

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

1 **PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA**  
2 **LAW.** The person signing the claim of lien on behalf of the association shall attach to and file  
3 with the claim of lien a certificate of service attesting to the attempt of service on the record  
4 owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of  
5 a copy of a summons and a complaint. If the actual service is not achieved, the person signing  
6 the claim of lien on behalf of the association shall be deemed to have met the requirements of  
7 this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1,  
8 Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail,  
9 postage prepaid to the physical address of the unit and the unit owner's address of record with  
10 the association, and, if different, to the address for the unit owner shown on the county tax  
11 records and the county real property records for the unit. In the event that the owner of record is  
12 not a natural person, and actual service is not achieved, the person signing the claim of lien on  
13 behalf of the association shall be deemed to have met the requirements of this subsection if  
14 service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule  
15 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

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