

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 278
PROPOSED COMMITTEE SUBSTITUTE H278-PCS70337-TO-7

Short Title: HOAs/Voluntary Prelitigation Mediation.

(Public)

Sponsors:

Referred to:

March 13, 2013

1 A BILL TO BE ENTITLED
2 AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS
3 RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS
4 ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE
5 PRIOR TO FILING A CIVIL ACTION.

6 Whereas, homeowners associations in condominium and planned communities
7 serve a vital role in our State by maintaining common areas, providing recreational facilities
8 and neighborhood meeting places, and adopting rules and regulations to help preserve property
9 values; and

10 Whereas, often disputes arise between homeowners associations and their members,
11 which either do not constitute the basis for a legal cause of action or result in costly litigation;
12 and

13 Whereas, the State has an interest in encouraging homeowners associations and their
14 members to voluntarily mediate disputes in a manner that will allow both sides to be heard and
15 to reach a mutually satisfactory agreement; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** Article 5 of Chapter 7A of the General Statutes is amended by adding
18 a new section to read as follows:

19 **"§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association**
20 **disputes.**

21 (a) Definitions. – The following definitions apply in this section:

22 (1) Association. – An association of unit or lot owners organized as allowed
23 under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

24 (2) Dispute. – Any matter relating to real estate under the jurisdiction of an
25 association about which the member and association cannot agree. The term
26 "dispute" does not include matters expressly exempted in subsection (b) of
27 this section.

28 (3) Executive board. – The body, regardless of name, designated in the
29 declaration to act on behalf of an association.

30 (4) Mediator. – A neutral person who acts to encourage and facilitate a
31 resolution of a dispute between an association and a member.

32 (5) Member. – A person who is a member of an association of unit or lot owners
33 organized as allowed under North Carolina law, including G.S. 47C-3-101
34 and G.S. 47F-3-101.

35 (6) Party or parties. – An association or member who is involved in a dispute, as
36 that term is defined in subdivision (2) of this subsection.



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1 **(b) Voluntary Prelitigation Mediation.** – Prior to filing a civil action, the parties to a
2 dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act),
3 Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an
4 association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation
5 pursuant to this section. However, disputes related solely to a member's failure to timely pay an
6 association assessment or any fines or fees associated with the levying or collection of an
7 association assessment are not covered under this section.

8 **(c) Initiation of Mediation.** – Either an association or a member may contact the North
9 Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the
10 name of a mediator or community mediation center. Upon contacting a mediator, either the
11 association or member may supply to the mediator the physical address of the other party, or
12 the party's representative, and the party's telephone number and e-mail address, if known. The
13 mediator shall contact the party, or the party's representative, to notify him or her of the request
14 to mediate. If the parties agree to mediate, they shall request in writing that the mediator
15 schedule the mediation. The mediator shall then notify the parties in writing of the date, time,
16 and location of the mediation, which shall be scheduled not later than 25 days after the
17 mediator receives the written request from the parties.

18 **(d) Mediation Procedure.** – The following procedures shall apply to mediation under
19 this section:

20 **(1) Attendance.** – The mediator shall determine who may attend mediation. The
21 mediator may require the executive board or a large group of members to
22 designate one or more persons to serve as their representatives in the
23 mediation.

24 **(2) All parties are expected to attend mediation.** The mediator may allow a party
25 to participate in mediation by telephone or other electronic means if the
26 mediator determines that the party has a compelling reason to do so.

27 **(3) If the parties cannot reach a final agreement in mediation because to do so**
28 would require the approval of the full executive board or the approval of a
29 majority or some other percentage of the members of the association, the
30 mediator may recess the mediation meeting to allow the executive board or
31 members to review and vote on the agreement.

32 **(e) Decline Mediation.** – Either party to a dispute may decline mediation under this
33 section. If either party declines mediation after mediation has been initiated under subsection
34 (c) of this section but mediation has not been held, the party declining mediation shall inform
35 the mediator and the other party in writing of his or her decision to decline mediation. No costs
36 shall be assessed to any party if either party declines mediation prior to the occurrence of an
37 initial mediation meeting.

38 **(f) Costs of Mediation.** – The costs of mediation, including the mediator's fees, shall be
39 shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and
40 payable at the end of each mediation meeting. When an attorney represents a party to the
41 mediation, that party shall pay his or her attorneys' fees.

42 **(g) Certification That Mediation Concluded.** – Upon the conclusion of mediation, the
43 mediator shall prepare a certification stating the date on which the mediation was concluded
44 and a statement that an agreement was reached or that mediation was attempted but an
45 agreement was not reached. If both parties participate in mediation and a cause of action
46 involving the dispute mediated is later filed, either party may file the certificate with the clerk
47 of court, and the parties shall not be required to mediate again under any provision of law.

48 **(h) Inadmissibility of Evidence.** – Evidence of statements made and conduct occurring
49 during mediation under this section shall not be subject to discovery and shall be inadmissible
50 in any proceeding in a civil action arising from the dispute which was the subject of that
51 mediation; except proceedings to enforce or rescind a settlement agreement reached at that

1 mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or
2 proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise
3 discoverable shall be inadmissible merely because it is presented or discussed in a mediation
4 under this section.

5 No mediator shall be compelled to testify or produce evidence concerning statements made
6 and conduct occurring in anticipation of, during, or as a follow-up to a mediation pursuant to
7 this section in any civil proceeding for any purpose, including proceedings to enforce or rescind
8 the settlement agreement; except in disciplinary hearings before the State Bar or Dispute
9 Resolution Commission and proceedings to enforce laws concerning juvenile or elder abuse,
10 and except in proceedings to enforce or rescind an agreement reached in a mediation under this
11 section, but only to attest to the signing of the agreement.

12 (i) Time Periods Tolled. – Time periods relating to the filing of a civil action, including
13 any applicable statutes of limitations or statutes of repose, with respect to a dispute described in
14 subsection (a) of this section, shall be tolled upon the initiation of mediation under this section
15 until 30 days after the date on which the mediation is concluded as set forth in the mediator's
16 certification. For purposes of this section, "initiation of mediation" shall be defined as the date
17 upon which both parties have signed the written request to schedule the mediation.

18 (j) Association Duty to Notify. – Each association shall, in writing, notify the members
19 of the association each year that they may initiate mediation under this section to try to resolve
20 a dispute with the association. The association shall publish the notice required in this
21 subsection on the association's Web site; but if the association does not have a Web site, the
22 association shall publish the notice at the same time and in the same manner as the names and
23 addresses of all officers and board members of the association are published as provided in
24 G.S. 47C-3-103 and G.S. 47F-3-103."

25 **SECTION 2.** This act becomes effective July 1, 2013, and applies to all
26 homeowners and condominium association disputes not specifically exempted by this act that
27 occur on or after that date.