

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 805
Apr 18, 2023
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10373-NK-82

Short Title: Prevent Abusive HOA Foreclosure Practices.

(Public)

Sponsors: Representative Longest.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE ALTERNATIVE DISPUTE RESOLUTION THROUGH
3 MEDIATION OR ARBITRATION BEFORE A PARTY CAN BEGIN LEGAL
4 PROCEEDINGS, INCLUDING FILING A CLAIM OF LIEN, FOR CERTAIN UNIT
5 OWNER ASSOCIATION DISPUTES AND CERTAIN LOT OWNER ASSOCIATION
6 DISPUTES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 47C-3-107.1 reads as rewritten:

9 "§ 47C-3-107.1. Procedures for fines and suspension of condominium privileges or services.

10 (a) Unless a specific procedure for the imposition of fines or suspension of condominium
11 privileges or services is provided for in the declaration, a hearing shall be held before the
12 executive board or an adjudicatory panel appointed by the executive board to determine if any
13 unit owner should be fined or if condominium privileges or services should be suspended
14 pursuant to the powers granted to the association in G.S. 47C-3-102(11). Any adjudicatory panel
15 appointed by the executive board shall be composed of members of the association who are not
16 officers of the association or members of the executive board. The unit owner charged shall be
17 given notice of the charge, opportunity to be heard and to present evidence, and notice of the
18 decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars
19 (\$100.00) may be imposed for the violation and without further hearing, for each day more than
20 five days after the decision that the violation occurs. Such fines shall be assessments secured by
21 liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or
22 services should be imposed, the suspension may be continued without further hearing until the
23 violation or delinquency is cured. A unit owner may appeal a decision of an adjudicatory panel
24 to the full executive board by delivering written notice of appeal to the executive board within
25 15 days after the date of the decision. The executive board may affirm, vacate, or modify the
26 prior decision of the adjudicatory body.

27 (b) Unless otherwise provided for in the declaration, the parties must engage in
28 alternative dispute resolution before instituting legal proceedings. A party choosing to challenge
29 a decision of the executive board, including decisions made under subsection (a) of this section
30 and G.S. 47C-3-107(d), may, no later than 10 days after receiving notice of the decision, and
31 prior to beginning legal proceedings, request in writing to the other party that the other party
32 submit the claim to mediation or binding arbitration. If neither party makes a timely request for
33 mediation or arbitration, the obligation for alternative dispute resolution is satisfied.

34 (c) The following apply to claims for mediation and arbitration:

35 (1) The party making the request is responsible for the costs of the mediator or
36 arbitrator.



- 1 (2) If neither party requests mediation or arbitration within the 10-day period
2 described in subsection (b) of this section or if mediation or arbitration do not
3 result in a settlement of the claim, the claimant may begin legal proceedings.
4 (3) The settlement of the claim must be documented in a written agreement signed
5 by each party.
6 (4) If a party fails to abide by the settlement agreement, the other party may begin
7 legal proceedings.
8 (5) If a party who begins legal proceedings prevails, the party is entitled to recover
9 from the other party court costs, attorneys' fees, and all other reasonable costs
10 incurred in enforcing the settlement agreement."

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

12 "**§ 47C-3-116. Lien for sums due the association; enforcement.**

13 (a) Any assessment attributable to a unit which remains unpaid for a period of 30 days or
14 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
15 the clerk of superior court of the county in which the unit is located in the manner provided in
16 this section. Before filing a claim of lien or otherwise beginning legal proceedings, a party must
17 comply with the procedures under G.S. 47C-3-107.1(b). Once filed, a claim of lien secures all
18 sums due the association through the date filed and any sums due to the association thereafter.
19 Unless the declaration provides otherwise, fees, charges, late charges and other charges imposed
20 pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are subject to the claim of
21 lien under this section as well as any other sums due and payable to the association under the
22 declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial
23 decision.

24 (b) The association must make reasonable and diligent efforts to ensure that its records
25 contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien,
26 the association shall mail a statement of the assessment amount ~~due due~~, notifying the lot owner
27 of the right to request mediation or arbitration pursuant to G.S. 47C-3-107.1(b), by first-class
28 mail to the physical address of the unit and the unit owner's address of record with the association
29 and, if different, to the address for the unit owner shown on the county tax records for the unit.
30 If the unit owner is a corporation or limited liability company, the statement shall also be sent by
31 first-class mail to the mailing address of the registered agent for the corporation or limited
32 liability company. Notwithstanding anything to the contrary in this Chapter, the association is
33 not required to mail a statement to an address known to be a vacant unit or to a unit for which
34 there is no United States postal address.

35 "

36 **SECTION 3.** G.S. 47F-3-107.1 reads as rewritten:

37 "**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or**
38 **services.**

39 (a) Unless a specific procedure for the imposition of fines or suspension of planned
40 community privileges or services is provided for in the declaration, a hearing shall be held before
41 the executive board or an adjudicatory panel appointed by the executive board to determine if
42 any lot owner should be fined or if planned community privileges or services should be
43 suspended pursuant to the powers granted to the association in G.S. 47F-3-102(11) and (12). Any
44 adjudicatory panel appointed by the executive board shall be composed of members of the
45 association who are not officers of the association or members of the executive board. The lot
46 owner charged shall be given notice of the charge, opportunity to be heard and to present
47 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to
48 exceed one hundred dollars (\$100.00) may be imposed for the violation and without further
49 hearing, for each day more than five days after the decision that the violation occurs. Such fines
50 shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of
51 planned community privileges or services should be imposed, the suspension may be continued

1 without further hearing until the violation or delinquency is cured. The lot owner may appeal the
 2 decision of an adjudicatory panel to the full executive board by delivering written notice of appeal
 3 to the executive board within 15 days after the date of the decision. The executive board may
 4 affirm, vacate, or modify the prior decision of the adjudicatory body.

5 (b) Unless otherwise provided for in the declaration, the parties must engage in
 6 alternative dispute resolution before instituting legal proceedings. A party choosing to challenge
 7 a decision of the executive board, including decisions made under subsection (a) of this section
 8 and G.S. 47F-3-107(d), may, no later than 10 days after receiving notice of the decision, and
 9 prior to beginning legal proceedings, request in writing to the other party that the other party
 10 submit the claim to mediation or binding arbitration. If neither party makes a timely request for
 11 mediation or arbitration, the obligation for alternative dispute resolution is satisfied.

12 (c) The following apply to claims for mediation and arbitration:

- 13 (1) The party making the request is responsible for the costs of the mediator or
 14 arbitrator.
 15 (2) If neither party requests mediation or arbitration within the 10-day period
 16 described in subsection (b) of this section or if mediation or arbitration do not
 17 result in a settlement of the claim, the claimant may begin legal proceedings.
 18 (3) The settlement of the claim must be documented in a written agreement signed
 19 by each party.
 20 (4) If a party fails to abide by the settlement agreement, the other party may begin
 21 legal proceedings.
 22 (5) If a party who begins legal proceedings prevails, the party is entitled to recover
 23 from the other party court costs, attorneys' fees, and all other reasonable costs
 24 incurred in enforcing the settlement agreement."

25 **SECTION 4.** G.S. 47F-3-116 reads as rewritten:

26 **"§ 47F-3-116. Lien for sums due the association; enforcement.**

27 (a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or
 28 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the
 29 clerk of superior court of the county in which the lot is located in the manner provided in this
 30 section. Before filing a claim of lien or otherwise beginning legal proceedings, a party must
 31 comply with the procedures under G.S. 47F-3-107.1(b). Once filed, a claim of lien secures all
 32 sums due the association through the date filed and any sums due to the association thereafter.
 33 Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed
 34 pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the claim of
 35 lien under this section as well as any other sums due and payable to the association under the
 36 declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial
 37 decision.

38 (b) The association must make reasonable and diligent efforts to ensure that its records
 39 contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the
 40 association shall mail a statement of the assessment amount ~~due due~~, notifying the lot owner of
 41 the right to request mediation or arbitration pursuant to subsection (b) of G.S. 47F-3-107.1, by
 42 first-class mail to the physical address of the lot and the lot owner's address of record with the
 43 association and, if different, to the address for the lot owner shown on the county tax records for
 44 the lot. If the lot owner is a corporation or limited liability company, the statement shall also be
 45 sent by first-class mail to the mailing address of the registered agent for the corporation or limited
 46 liability company. Notwithstanding anything to the contrary in this Chapter, the association is
 47 not required to mail a statement to an address known to be a vacant lot on which no dwelling has
 48 been constructed or to a lot for which there is no United States postal address.

49"

50 **SECTION 5.** This act is effective when it becomes law and applies to actions taken
 51 by the executive board on or after that date.