

2018

**DISPUTE RESOLUTION
OPTIONS FOR
HOMEOWNERS,
ASSOCIATIONS &
GOVERNING ENTITIES
(LRC)**

MINUTES



DISPUTE RESOLUTION OPTIONS FOR HOMEOWNERS,
ASSOCIATIONS
AND GOVERNING ENTITIES (LRC)

Sen. Dan Bishop - Co-Chair

Rep. Sarah Stevens - Co-Chair



Joint Committee on Dispute Resolution Options for Homeowners,

Associations and Governing Entities (LRC)

<u>Member</u>	<u>Assistant</u>	<u>Phone</u>	<u>Office</u>
Sen. Dan Bishop Co-Chair	David Larson Committee Assistant	733-5743	2108 LB
Rep. Sarah Stevens Co-Chair	Lisa Brown Committee Assistant	715-1883	419 LOB
Sen. Bill Cook	Jordan Hennessy	715-8293	1026 LB
Sen. Joel Ford	Lisa Fair	733-5955	520 LOB
Sen. Rick Gunn	Karen Johns	301-1446	523 LOB
Sen. Andy Wells	Linda Wente	733-5876	1028 LB
Rep. Elmer Floyd	Dorothy McLean	733-5959	1325 LB
Rep. Holly Grange	Laura Holt-Kabel	733-5830	604 LOB
Rep. Destin Hall	Katelyn Garlow	733-5931	306C LOB
Rep. Rodney Moore	Charmey Morgan	733-5606	402 LOB

Ex-Officio Members

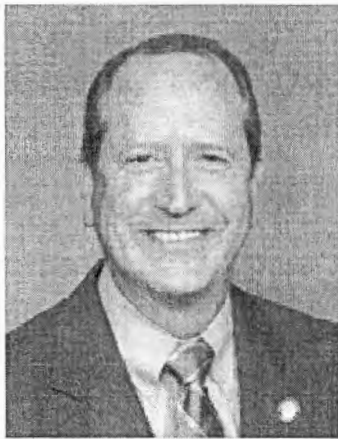
Sen. Bill Rabon	Paula Fields	733-5963	2010 LB
Rep. David Lewis	Grace Rogers	715-3015	2301 LB

Staff

Amy Darden – Legislative Analysis	733-2578
Bill Patterson - Legislative Analysis	733-2578
Matthew Meinig – Bill Drafting	733-6660



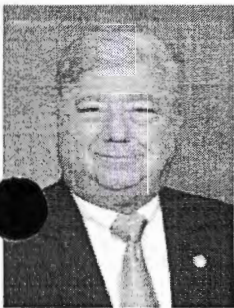
**Committee on Dispute Resolution Options for Homeowners,
Associations and Governing Entities (LRC)**
2018



Sen. Dan Bishop, Co-Chair



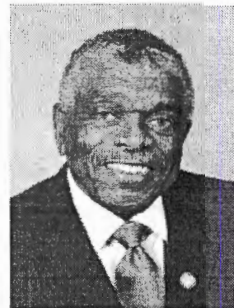
Rep. Sarah Stevens, Co-Chair



Sen. Bill Cook



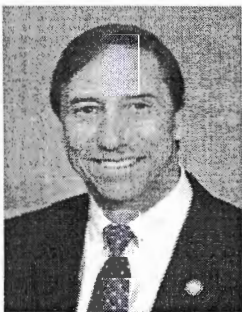
Sen. Joel Ford



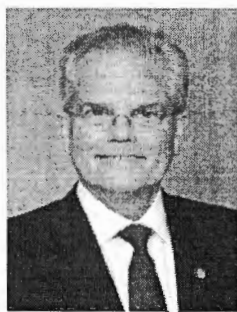
Rep. Elmer Floyd



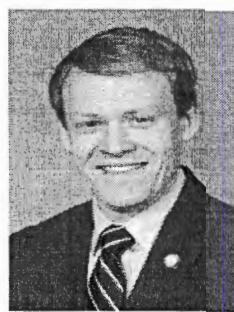
Rep. Holly Grange



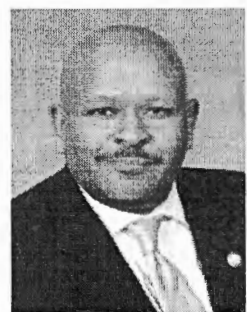
Sen. Rick Gunn



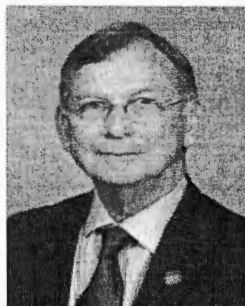
Sen. Andy Wells



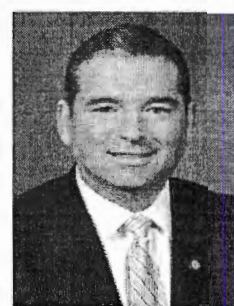
Rep. Destin Hall



Rep. Rodney Moore



**Sen. Bill Rabon
Ex-Officio**



**Rep. David Lewis
Ex-Officio**





NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

May 24, 2018

MEMORANDUM

TO: Members, Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017)
FROM: Sen. Dan Bishop, Co-Chair
Rep. Sarah Stevens, Co-Chair
SUBJECT: Meeting Notice

The **Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017)** will meet at the following time:

DAY	DATE	TIME	LOCATION
Wednesday	March 28, 2018	1:00 PM	421 LOB

Parking for non-legislative meeting attendees is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Ann Luck at annlu@ncleg.net.

cc: Committee Record X
Interested Parties X





**Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC) 2017
MARCH 28, 2018
MINUTES**

The Legislative Research Commission on Dispute Resolution Options for Homeowners, Associations and Governing Entities met on Wednesday, March 28, 2018 at 1:00 pm, in Room 421 of the Legislative Office Building. Members present were Chairs Representative Sarah Stevens and Senator Dan Bishop; Committee members present were: Senators Joel Ford and Rick Gunn and Representatives Elmer Floyd, Holly Grange, and Destin Hall; and Staff present were Amy Darden and Bill Patterson of the Legislative Analysis Division and Matthew Meinig of Bill Drafting. A copy of the Agenda, Attendance, and Visitor Registration is attached to these minutes, (Attachment 1 - 3).

Representative Stevens called the meeting to order and thanked Committee Members, Sergeant at Arms, and Staff who would be assisting with the meeting for their attendance.

Committee Charge

Rep. Stevens stated that whenever we have a committee we are given a very specific charge, (Attachment 4). In this case, it is a very limited charge and want everyone to bear that in mind as the charge is read. The charge states that we shall study issues surrounding the creation of a mediation and arbitration board to resolve disputes between owners of property located in a homeowners or property owners association and the governing entities of such associations. We are only looking at alternative means for them to resolve disputes. This committee charge is very limited and we are only to discuss mediation and arbitration boards and if they are needed for those who have homeowners associations.

Presentations

Ole Madsen – HEAR4NC, Inc. was recognized to speak before the Committee. Mr. Madsen stated that there is nothing wrong with dispute resolution and trying to settle problems that way but the problem is that the laws are not written correctly. The laws now are basically set up to protect the developer and the thing that is missing in all of this is that there is no education. For complete copies of Mr. Madsen's comments see attachments 5 and 6.

Rep. Stevens – Do you have any thoughts on alternative dispute resolutions and how they might or might not work well with property owners associations?

Mr. Madsen – I doubt they will work very well because people aren't educated.

Rep. Stevens – What are the remedies that might be available to homeowners right now if they are unhappy with their board of directors?



Mr. Madsen – You can call a special meeting and you can basically throw them out.

Rep. Stevens – So the only incentive for the homeowners association to try to mediate or arbitrate with you is that you may throw them out?

Mr. Madsen – Yes, they are all owners and they usually have one piece of property and if they can get three quarters or two thirds together they can vote them out. It's pretty democratic.

Rep. Stevens – Is there anything else you would like to say to the members about arbitration/mediation alternative dispute resolutions in homeowners situations?

Mr. Madsen – There is nothing wrong with it I just don't see how it's going to work.

Jerry Morton – Homeowner, Fuquay NC – What is the alternative if mediation does not work?

Rep. Stevens – Mr. Madsen is saying basically that it is to throw the board out.

Mr. Madsen – There are usually an odd number on the board but it is very hard to have them thrown out. This is the only thing available to homeowners and it is very sad.

Henry W. Jones, Jr. – North Carolina Chapter of Community Associations Institute was recognized to speak before the Committee. For a complete copy of Mr. Jones remarks see attachment 7.

Rep. Floyd – Explain the need for paying the fee of \$250 by credit card.

Rep. Stevens – It is a voluntary program and you have to pay this money up front on each side in order to get it done.

Rep. Floyd – Why only by credit card?

Mr. Jones – I guess it is this way to make sure there is a guarantee of payment.

Rep. Stevens – In a voluntary mediation people can choose their own mediator and it doesn't have to be a particular group. This person could be anyone.

Mr. Jones – We have done freeform mediation where you just pull people out of the air and allow them to mediate and try to resolve disputes that way. There are many different kinds of mediation.

Rep. Stevens – I'm sure there is somewhere they could take cash or check instead of using a credit card.

Rep. Floyd – The amount of money is not a problem but specifying how to pay it is an issue.

Rep. Stevens – Do you have to be a member of this institute to participate?

Mr. Jones – No, you do not.



James H. Slaughter – Black, Slaughter & Black, PA was recognized to speak before the Committee. For a complete copy of Mr. Slaughter's remarks see attachments 8 & 9. Following these remarks, Mr. Slaughter stated in answer to the question raised by Rep. Floyd that he had served on the committee that came up with the idea of creating this process. The idea behind the credit card was simply that it could be done immediately online and then the organization would know that both parties were serious and would not be chasing down money. There is no prohibition on some other form of payment.

Sen. Ford – Am I clear that you are not recommending any changes whatsoever and is it my understanding that you and the association you are representing are completely satisfied with the statutes we have in North Carolina as it relates to this particular issue?

Mr. Slaughter – As it relates solely to arbitration dispute resolution. As noted, any person who goes to court will end up in some form of ADR anyway. There is currently a statute that requires all associations to notify members of the right to mediate and I have assisted in those mediations on behalf of the owners, the associations, and have also served as mediator. I believe you have already set up a process that works pretty well. Is there anything you could propose that I would find better than what exists right now? I'm sure there is but I cannot think of a better process than what we have right now that would not involve tremendous resources and money.

Gary Gimbert – HEAR 4 NC – Where did you come up with those percentage rates on happy and unhappy HOA members?

Mr. Slaughter – Zogby, which is a survey organization. They tend to do polls about every two or three years about association life and those are available online.

Frank Laney – NC Dispute Resolution Commission was recognized to speak before the Committee. The Dispute Resolution Commission is roughly the State Bar for mediators. In certain programs in North Carolina one is required to be a certified mediator and those certifications are given by the Dispute Resolution Commission so we set training standards and if you are a bad mediator we reserve the right to remove your mediation certification. Fortunately, in twenty years of existence we have only had to do that one time. We occasionally send letters of admonishment saying please don't do that again but only one has been removed. Mr. Laney then stated that all remarks going forward are from him as a citizen of North Carolina because the Dispute Resolution Commission has looked at this issue but has not had a chance to reach any conclusions. For a copy of Mr. Laney's recommendations see attachment 10.

Henry Jones – The statute currently says that an association member may contact the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina. Have you gotten any phone calls and if you have are you referring those to clerks of superior court?

Mr. Laney – No, but Leslie Ratliff on behalf of the Commission and also is the staff of the Commission has received some phone calls. I think what she has done is simply explain the mediation process to them and also explained how the parties can choose their own mediator. She serves as an information conduit but has not served as clerk of court. The Network Centers have been contacted and they do serve that clerk of court function. They state that if both parties want to come they will find a mediator and set up a day, time, and place. They are the ones I have heard back from and understand that the complaints they are hearing are that one side will contact them and the other side does not want to participate.



Jim Slaughter – If there was a statute that required homeowners that are not in litigation to mandatorily sit at a mediation there would be a cost involved in that. Is the expectation with your thoughts that this is a free service provided by the State or is this something that would bear a cost to the homeowner and the association?

Mr. Laney – My belief is that the best way to design that would be shared cost between the two litigants. I do not believe that burdening the rest of the citizens of the State is a wise choice for a number of different reasons. I realize that this allows me, as a homeowner, to require the association to pull some money out of their pocket at my behest. However, if I go to the clerk of court you will do the exact same thing and may be even more money. It is in that light that I think it is a burden but I think that requiring people to at least sit down and try before they go to court is not a bad idea.

Sen. Ford – How would a financial hardship be considered in mediation prior to mandatory filing of a lawsuit? One of the things we are not talking about is the fact we have had and still do have homeowners who have financial hardships which would make them unable to be in compliance with a homeowners association. How would that financial hardship, as you understand it, be taken into consideration in dealing with these types of issues?

Mr. Laney – As a general rule dues collections are not subject to these mediation and arbitration programs. To address your real question, the North Carolina Dispute Resolution Commission has adopted rules of ethics for the mediators we certify and part of those rules of ethics as well as part of the mediation programs themselves say that mediators can charge a fee but if one of the parties is found indigent then as a mediator that will be part of a pro bono service. I hand the person a bill and they hand me an affidavit saying that they are indigent and there is no cost.

Sen. Ford – Is that a suggestion or is that right now statutorily mandated by the mediator?

Mr. Laney – It is the existing program in the state court programs. It is currently the system and has been for 20 some years in our State. How to expand that into this new program may require a little bit of thought but is something doable.

Sen. Ford – Part of it has to be education for the homeowners to help them understand what the process is and then what their remedies are in working out these disputes. I am going back to the fact that we have had a lot of financial hardships all over the State and I am looking for additional resources in trying to help out homeowners.

Rep. Floyd – Is mandatory mediation a way to stay out of the court system?

Mr. Laney – Yes, that is one reason but also my philosophy is that people do a better job of working out their own disputes rather than going elsewhere having someone telling them what to do whether you like it or not. We should at least give them that opportunity to do so before they go to the judge, etc.

Rep. Floyd – So your program is mandatory and Mr. Jones is voluntary?



Rep. Stevens – The current statute is voluntary but the questions are: do we make it mandatory, do we change the program in some way, and do we consider mandating an arbitration? Mr. Laney is making his recommendation that he thinks mandatory is good.

Janice Almond – Immediate Past Board Chair, Mediation Network of North Carolina was recognized to speak before the Committee. Ms. Almond stated that she became the Board Chair by being a Community Mediation Executive Director so there is a group of community mediation centers totaling 18 across the State. There is a lot that has been covered by Mr. Slaughter but want to add that their charge when they were formed years ago is to provide community mediation local to our own communities for not only to the community but also to the local courts and schools. We are not attorney mediators but do have a few volunteers who are but most are not. We have very much the same mediation training that others do and the mediation process is pretty standard.

We find that whenever we work with folks in our community they know and trust us except when it comes to the homeowner associations. Over the past couple of years there have been calls to the Mediation Network office from 76 people belonging to a homeowners association who were angry and disgruntled and wanted to go to mediation. We made the calls, contacted them and six went past the first phone call and one actually went to mediation. What we are finding is that the head of the HOA in many cases is associated with a local developer or might be employed by a local developer and the developers have no interest in going into mediation. I am not sure how you would require people to mediate but you can require them to show up. I think there are several attorneys in the past who did show up when required to go through superior court mediation, walked into the room and stated that they would not mediate and then left. Making it mandatory does not mean you have to actually talk to people. Another point I will make is that we are not certified through the Dispute Resolution Commission.

Rep. Stevens – What is the cost associated with doing your mediation?

Ms. Almond – Most of us are non-profits and we have a niche in our community. There is no way that anyone in my communities that I serve would pay me attorney fees. I serve a niche in my community that cannot afford to reach for a higher level of service from their perception.

Rep. Stevens – Can you reveal the cost. Is it a consistent cost through all the Mediation Network?

Ms. Almond – It is pretty much hourly and some have an administrative fee for some services. I would say it would run anywhere from \$50 to \$100 per hour through the center; because we aren't in competition with attorneys and we don't provide the same kind of services.

Committee Discussion

Sen. Bishop – I would say that the question is whether to require mediation as an initial step before going to court for folks who have non-monetary controversies with their homeowners associations. I would also say that Ms. Almond's last comments crystalized it for me as well as Sen. Ford's question about folks not having funds to mediate are hard questions. I also think that Mr. Slaughter's comments about shifting those costs to other homeowners is also a problem. I am even concerned about someone



who wants to get into court and litigate is posed with another obstacle to that before they enter court. If you are imposing a mandatory mediation step before litigating you might be doing something that, in addition to the question about how it will be paid for, the likelihood may be relatively low that that process will succeed if it occurs before you have gone through part of the court process. I have some misgivings about making it mandatory.

Rep. Stevens – I was certified as a mediator and I am concerned that 76 people called the Mediation Network to see about trying to get some resolution and only six owners called back but only one person mediated but it didn't go anywhere. This is one of my primary concerns about us mandating a mediation program here because in mediation you always need to know your BATNA. A BATNA is your best alternative to negotiating a settlement and if nobody has litigation going what is going to bring them to the table? If you have litigation pending your BATNA is what might or might not happen in court. This gives you more incentive to come to the table so if you go into a mandatory mediation without litigation what happens and what if it is an issue a homeowner has raised that is not even litigable? If I am a HOA and I don't feel they have legal recourse why would I want to sit down and discuss. I feel that this is part of the issue we are getting into.

Rep. Floyd – What are the ages of the people who live in communities with a HOA?

Rep. Stevens – All ages move into homes in these communities.

Sen Ford – Have you given any thought to bringing in any homeowners?

Rep. Stevens – We have opened this meeting up and if there are any homeowners in the audience who want to speak about mediation and arbitration they are welcome to comment.

Sen. Ford – I think it is important to hear both sides and am interested in how we will educate our homeowners and understanding that we have covenants that are not uniform all across the State.

Jerry Morton – Homeowner, Wake Co. – There are people in my neighborhood who have had arbitration and lost. Now there are reprisals. We did an affidavit for a court case and the people who filed against us lost and then we were immediately inundated with criminal felonies for reprisals. I am wondering how the homeowners can be protected from reprisals.

Sen. Bishop – Do you have any notion about what sort of protection from reprisals there should be? What should the law say in your view?

Jerry Morton – I have some views but not being an attorney I feel that I am out of my league in answering.

Sen. Bishop – Sometimes problems exist but the solution is not all that evident. Sometimes you can embark on solutions and they make situations worse rather than better. As long as there are people working and living together there will be disputes and how to make it better and not worse is the question.

Jerry Morton – My whole concern is the bullying and reprisal on high quality citizens.



Ole Madsen – What happened to Mr. Morton happens to others every day. If we don't get some education nothing is going to happen and you do have some resolutions. My answer to you (Mr. Morton) is to call the police.

Rep. Stevens – Do you believe mandating arbitration or mediation will work?

Ole Madsen – Only people who are educated. They have to know what they are talking about.

Gary Gimbert – HEAR 4 NC – I live under a HOA and I started a law suit against my HOA a year and a half ago. If it does go to some type of mediation resolution can there be a time limit on it? I have now been a year and a half paying legal fees and this is all about growing grass. I have been asked to leave the neighborhood and they keep on dragging it out.

Sen Ford – As it relates to the charge, clearly there is an imbalance of power and cost as it relates to a mandatory mediation for a homeowners association against an individual owner. This will not work unless we can find a level playing field between a single homeowner and its board.

Rep. Stevens – Do you have any suggestion you can share with the Committee on how you balance that in a mediation/arbitration?

Sen. Ford – I am working on it but this is not going to work if you mandate mediation.

Rep. Stevens – I agree and disagree in part. Are there homeowners who may make unreasonable requests of the HOA? That could be a big unbalance. In speaking on the charge of the Committee, we could create a mediation and arbitration board to resolve disputes. If we do create one do we make it mandatory and who pays for them? Is this something we set up as a state fund or do we mandate that all homeowners associations put in some amount of money based on the number of homeowners they have. We have talked about resolutions and is there something we want to take further steps on?

Sen. Bishop – I will say that I was asked to co-chair this committee and the charge does somewhat constrain what we can get into which may be helpful. On the other hand, I understand that there is a lot you can discuss on how to make it better. Given the scope of what we have been given I want to hear from everyone but what has yet to emerge from this meeting is some advocate who says what they think the solution should be. We all share the concerns for homeowners but do not have a solution.

Sen Gunn – I have been on every side of this issue and when I look at our charge I am still unsure as to what we are supposed to be doing relative to specific, concrete legislation and/or a decision on this charge. There is a reason this has been brought to us and I do know what I get to practice daily as a homeowner and as a manager involved in association matters. I think what I need help on, when talking about the charge with studying issues surrounding the creation of a mediation/arbitration board, I believe that I have more questions I need to be answered on the real dynamics of this issue. I need to understand, not only the charge, but the basis of the charge. We could stay here all year and talk about this because there are some really rogue homeowners and there are some incredibly bad actors who run associations. Until I have a better basis on why we have been given this charge and better understanding of what we are going to solve I am very puzzled about how to come up with a solution.

Rep. Jonathan Jordan – In 2012 I chaired with Rep. Justice a House Select Committee on Homeowners Associations. We had hearings across the State and heard of lots of problems and I'm sure that you as



Legislators have heard many problems about HOAs. The charge for this Committee is a very specific type of Committee set up to study a specific item. I put the language in the Regulatory Reform bill and I felt that this might be a possible avenue we could pursue to deal with this huge HOA issue. I used this language to see if we need to set up a board to handle all of these problems because I've heard in some of the hearings that some people wanted to set up a whole court system to handle it. I wanted to get opinions of members of both chambers to talk about if this was a possible way to proceed to help solve this problem. It is not dealing with the entire issue overall because I don't think that would be possible.

I hope you can give some input and hear some information on what is out there already as far as boards and arbitration and give opinions on if this is a possible way to go. I have put in legislation to deal with larger items and the best one so far spelled out all the documents that an HOA had to give it's homeowners in such a way that was so specific that if you took it to a judge they could immediately rule yes or no very quickly and simply. The other bill had to do with education and licensing property managers which is a little more complicated because the Real Estate Commission is not really in favor of that kind of thing. After the Committee with Rep. Justice it has been an issue that has followed me around and I've talked to many people who are not even constituents about this.

Sen. Ford – What type of board are you talking about? Are you talking about a new board or a specific board to talk about this or are you talking about the court system?

Rep. Jordan – I don't have a preconceived idea about what that might be. I want this group to look at it and think about what that might be and suggest solutions.

Sen. Ford – I was trying to gain clarity about your experiences about what you were hearing as it relates to those suggestions.

Rep. Jordan – I am looking for answers as to if mediation/arbitration is the way to solve it. We have had presentations today on what is already in place so we aren't reinventing the wheel.

Rep. Floyd – The Human Relations Commission has a fair housing statute and they deal with fair housing complaints. That may be one area that could assist you as you advance forward.

Rep. Stevens – If you have a group that already exists and you want to tax them with hearing these complaints this means that any citizen or HOA could bring a complaint and we mandate that this board hear it where do they conduct their hearings?

Rep. Floyd – They have a proper location in the Office of Administrative Hearings.

Rep. Stevens – You would tell someone with an issue in Murphy to come to Raleigh to have their issue heard?

Rep. Jordan – When you come to an ALJ or Property Tax Commission you come to Raleigh. We are talking about something different than fair housing. We are talking about private contracts between homeowners and associations so it's not really covered under fair housing federal regulations or rentals. I don't know if their jurisdiction would cover that but thank you for the thought.

Rep. Stevens – We need to come up with a plan or a report. We have to do something even if it is to say we don't think we can deal with this issue, we don't think it needs dealing with, or we think it is too



complex and we recommend studying it after the short session. Do we have a plan or motion or do we wait?

Sen. Bishop – The issue is a complex one. I have misgivings that creating a new regulatory board to try and do this statewide is beneficial to the homeowners. In listening to Mr. Jones and Mr. Slaughter, they have a mediation program they have developed that hasn't had a lot of time in the field and is available to those who want to use it. What avenue would be to say that now is not the right time for the General Assembly to take further action on this so my recommendation would be not to do anything further on this. The other possibility is to say that our recommendation from this Committee would be that the Committee would meet again in the next interim and at that time members and others that are interested come forward with specific recommendations for action. For me, those are the only practical answers right now.

Rep. Stevens – If we did it a different way and said to continue to study the issue, what kind of issues does that raise because we are a LRC?

Bill Patterson, Research – You would need a new authorization for the LRC.

Karen Cochran- Brown, Research – The LRC is a statutory committee that has a structure in how they are operated and they adopted rules as to how committees would operate. Your staff has identified the timeline included in the statute. The LRC rules also included a provision that all of the committees that were appointed for this interim would expire after April 20, 2018. A recommendation of this committee could be that they reauthorize to continue to meet after the short session.

Rep. Floyd – How time sensitive is this issue?

Rep. Jordan – Not particularly because the whole issue is so big I am trying to take small bites of it.

Rep. Stevens then recognized Sen. Bishop who moved that the LRC reauthorize this committee for study of this issue before the next long session.

Rep. Hall – Before discussing the motion, are attorney's fees available in a dispute of a homeowners case?

Henry Jones – Some legal documents provide that prevailing parties get attorney fees. In my experience that is in a minority of cases.

Rep. Hall – So they are not available by statute?

Henry Jones – No

Rep. Hall – I would like to avoid a cost to the taxpayer down the line. Typically we have boards like the Industrial Commission because we have two parties who need a board to give an immediate response. I don't know that HOA disputes are exactly that. This still leaves us with the issue of the inequities of the parties. The HOA may have money and the homeowner who does not or visa versa. In my opinion the best way to solve that issue is to create, by statute, the ability to get attorney's fees for the successful party in a dispute.

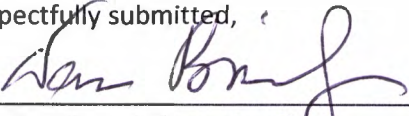


Rep. Stevens – Sen. Bishop would you accept an amendment to your motion that would read that we recommend that the Legislative Research Commission reconstitute the Committee during the interim following the 2018 Short session to continue its study of the issue stated in its charge, including a consideration of other means by which the use of alternative dispute resolution in these types of disputes can be encouraged, such as by providing for an award of attorney's fees?

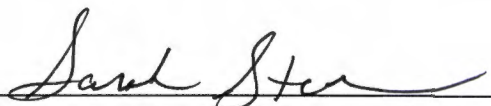
Sen. Bishop – I have no problem with that amendment to my motion.

Rep. Stevens then called for a vote and the ayes carried. There being no further business before the Committee, Rep. Stevens adjourned the meeting.

Respectfully submitted, e



Senator Dan Bishop, Co-Chair



Representative Sarah Stevens, Co-Chair



Lisa Brown, Committee Assistant

Attachments:

1. Agenda
2. Attendance
3. Visitor Registration
4. Committee Charge
5. Handout – Ole Madsen
6. Handout – Ole Madsen
7. Handout – Henry W. Jones, Jr.
8. Handout – James H. Slaughter
9. Handout – James H. Slaughter
10. Handout – Frank Laney





LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON DISPUTE RESOLUTION OPTIONS FOR HOMEOWNERS, ASSOCIATIONS AND GOVERNING ENTITIES

March 28, 2018

Rm. 421 LOB

Rep. Sarah Stevens, Presiding

Committee Co-Chairs

Rep. Sarah Stevens
Sen. Dan Bishop

Legislative Members

Rep. Elmer Floyd
Rep. Holly Grange
Rep. Destin Hall
Rep. Rodney Moore
Sen. Bill Cook
Sen. Rick Gunn
Sen. Andy Wells
Sen. Joel Ford

Ex Officio Members

Rep. David R. Lewis
Sen. Bill Rabon

I. Welcome & Opening Remarks (1:00pm-1:10pm)

Representative Sarah Stevens, Co-Chair
Senator Dan Bishop, Co-Chair

II. Committee Charge (1:10pm-1:15pm)

Amy Darden, Staff Attorney, Legislative Analysis Division

III. Presentations (1:15pm-2:10pm)

A. Ole Madsen

HEAR4NC, Inc.

B. Henry W. Jones, Jr.

North Carolina Chapter of Community Associations Institute

C. James H. Slaughter

Black, Slaughter & Black, PA

D. Frank Laney

N.C. Dispute Resolution Commission

E. Janice Almond

Immediate Past Board Chair, Mediation Network of North Carolina

IV. Committee Discussion

V. Adjourn





VISITOR REGISTRATION SHEET

Committee on Dispute Resolution Options for
Homeowners, Associations and Governing Entities

March 28, 2018

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jason Pikler	NC Justice Center 224 S. Dawson St Raleigh
De Madson	Hear 4 NC
GARY GIMBEAT	HEAR 4 NC
Ruth Munkle	NCGA LA
Anastasia McNamee	NCGA Intern
Joni Slaughter	Attorney, Black, Slaughter & Black, PA
Henry Jones	Attorney - John Price Raleigh
Frank Laney	Dispute Resolution Commission 409 Accolade Dr Cary NC 27513



VISITOR REGISTRATION SHEET

Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities

March 28, 2018

Name of Committee

Date _____

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NAME _____

FIRM OR AGENCY AND ADDRESS

Janice Almond

radiation network of nc
Reidsville, NC

Jillian Totman

MWC LLC

Alice mahood

NCGA - Senator van Duyn

Terry Marlon

5423 Brushy Meadows Dr. F.V. 27526

Sim Harrell

59 14





Joint Committee

ON

**Dispute Resolution Options for
Homeowners, Assoc. and Governing
Entities**

March 28, 2018 – 1:00 PM

Room 421

Senate Sergeant at Arms:

TOM BURROUGHS

LINDA MATTHEWS

House Sergeant at Arms:

BILL BASS

WILL CROCKER

DEAN MARSHBOURNE



Committee on Dispute Resolution Options for Homeowners,

Associations and Governing Entities

Pursuant to S.L. 2017-21 1, the Committee shall study issues surrounding the creation of a mediation and arbitration board to resolve disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations.

Senate Members

Sen. Rabon	Ex Officio
Sen. Bishop	Chair
Sen. Cook	
Sen. Gunn	
Sen. Wells	
Sen. Ford	

House Members

Rep. Lewis	Ex Officio
Rep. Stevens	Chair
Rep. Floyd	
Rep. Grange	
Rep. Destin Hall	
Rep. R. Moore	



Ok Mike

Speech 8/28/18

Comments on Dispute Resolutions

Having available procedures for citizens to settle their disputes is always a good idea. However, if the law and facts exist that causes the disputes in the first place, it is suggested that those problems should be solved first.

The North Carolina Planned Community Act is ridiculous and was designed for the benefit of the developer. There are no consumer protections in the Act.

The reason there are no consumer protections in the Act is because the developer would not approve of the Act.

It is substantially different from the NC Condominium Act and the Uniform Common Interest Ownership Act.

The NC Planned Community Act must be amended to conform to at least the NC Condominium Act.

I have sat through two sessions of the House HOA Select Committees.' Both committees worked hard and proposed legislation that eventually died in committee due to the activity of certain parties who control all HOA legislation. (KB/BS)

Each HOA committee discovered many problems and set forth a finding of fact and a list of those problems. I have a copy and they are part of the public record.

None of those problems have been resolved.

In the NC Planned Community Act, the developer can run the association for 20 or 30 years or even more. When does the member get a chance to rectify the problems? After 30 years?

The declaration and bylaws are designed to benefit the developer and the board who is appointed and controlled by the developer.

The members rule the association and not the executive board.

Getting there is NO B of D in NC

G.S. 47F controls over G.S. 55A.

Amending the NC Planned Community Act and placing the Common Interest Communities and the community association managers under control of the NC Real Estate Commission will solve 85 percent of the problems.

Why go to mediation or dispute resolution or arbitration when everything is stacked against the member?



Suggestions and Thoughts on HOA disputes.

1. Practically speaking the NC Planned Community Act is all wrong and is substantially different from the NC Condominium Act.
2. The NC Planned Community Act lacks any disclosure requirement when selling lots, contrary to the "public offering" required by the NC Condominium Act. This causes disputes and misunderstandings.
3. In many situations the governing documents prepared by the developer give all the power to the developer and the executive board, and in some cases inconsistent with the laws. This causes many disputes.
4. Disputes usually involve interpretation of the governing documents. Some of these can be handled by the members at a meeting, but they do not know how or it is blocked.
5. Majority of the disputes are for minor infractions or rogue boards that assume authority contrary to the rules. Too expensive to arbitrate or litigate.
6. The minor infractions by the board or by a member cause problems but are too expensive to file suit and too difficult to remove board members because of the improper use of proxies.
7. The members of associations have the power and authority to set up a dispute resolution for their association as long as it conforms to due process.

The following is recommended to reduce disputes:

- Each association should be required to register with the NCRC and advise the name of the community manager if any.
- To fund this idea, each association upon registering with the NCRC would pay an annual fee, this would cover the cost of education and handling disputes.
- The NCRC would appoint an administrator to handle all disputes and questions concerning issues about the interpretation or validity of governing documents.
- The NCRC should offer education on the state statutes on HOAs.
- Members elected to the executive board should have to be certified that they have received education and understand the laws.
- The NC Planned Community Act and the Condominium Act need to be amended to be brought in conformity with the Uniform Common Interest Ownership Act (2008).
- All Community association managers should be under the control of the NCRC.
- We have pending proposed statutes that cover a lot of these suggestions but certain entities have been able to kill them in committee.

For background information check out the following:

Attorney Peter Hetrick's law review article from Campbell University written in 1999 showing the problem with the New NC Planned Community Act.

The finding of facts of the House HOA Committee of 2010 and its proposed legislation which disappeared in Committee. This is a section taken from that bill that was proposed:

"§ 47F-3-120.1. Alternative dispute resolution allowed.

Parties to a dispute arising under this Chapter, an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall use only mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

The NC Real Estate Commission committee in 2005 met to find a way to protect the money collected by the associations. It was recommended that the associations register, education be provided and possibly real estate license might be necessary for community managers.

If you need copies or links to the above let me know.

**PRESENTATION TO THE LEGISLATIVE COMMITTEE ON DISPUTE
RESOLUTION OPTIONS FOR HOMEOWNERS, ASSOCIATIONS AND GOVERNING
ENTITIES**

March 28, 2018

My name is Henry W. Jones, Jr. and I am here on behalf of the North Carolina Chapter of Communities Associated Institute ("CAI"). CAI is an international organization with more than 33,000 members, including homeowners, managers, attorneys and other service providers dedicated to building and maintaining better communities. The North Carolina Chapter has been in existence for more than 30 years.

I am pleased to provide comments on behalf of CAI regarding alternative dispute resolution in community associations. I have practiced community association law for more than 35 years and have seen many kinds of cases and controversies. I was also a member of the Bar Association Committee in 1995 and 1996 which drafted the Planned Community Act, which has governed the creation and administration of planned communities since 1999.

The kinds of disputes that arise in these associations are generally relatively small. They involve questions of land use violations, parking, disposal of waste, noise, unauthorized architectural improvements, maintenance and disclosure of association records (which is likely governed by the Association's Bylaws and G.S. §§ 55A-16-1 thru 5 and G.S. § 47C-3-118 or G.S. § 47F-3-118. While these disputes are relatively uncomplicated and involve small amounts of money in controversy, they involve people's property and can become quite emotional. These disputes may be unattractive to some attorneys, and for this reason and others, they may not always be well suited for litigation in Court.



Community Associations are governed by a set of covenants that contain a number of provisions governing the affairs of the association, frequently including classes of memberships, assessments, remedies for non-payment of assessments, maintenance and architectural control. I have encountered a few sets of covenants – drafted by the original developer, which contain mandatory mediation and/or arbitration provisions. Some are binding and limit litigation, but most were non-binding. These provisions were written at the behest of and for the protection of the original developer, but there were carry through provisions that applied in the post development period as well. Most of these provisions specifically provided that they did not apply to certain kinds of controversies, such as assessment collection and cases involving injunctive relief. My experience with these documents and cases that arose under these documents was that the mandatory dispute resolution provisions were unwieldy, were not popular, but they were successful in limiting litigation.

In 2013, I worked with Rep. Deborah Ross in the drafting of G.S. § 7A-38.3F (Pre-Litigation Mediation of Condominium and Homeowner Association Disputes.) This statute is intended to set up a quick and inexpensive form of mediation of condominium and HOA disputes. The statute requires each association to, in writing, notify all members of the association each year that they may initiate mediation under the statute to resolve any dispute with the association. The clients my firm represents, uniformly comply with this statute. Nevertheless, in the five years since the enactment of the statute, I am only aware of two cases that have used the statute to resolve a pending dispute.

As a result of what we think is an increasing number of disputes between members and their associations, CAI moved two years ago to set up a CAI sponsored mediation program to provide a fast and relatively inexpensive alternative to litigation. In December of 2017, CAI



completed and announced this new mediation program, called the Community Association Mediation Program ("CAMP"), which is intended to assist disputing parties in resolving their conflict through a neutral third party. Mediators are experienced professionals in the field of association management or law. They work to encourage discussion between a community association board representative and an owner toward a mutually acceptable outcome. This mediation is voluntary and non-binding. Both parties to the dispute must agree between themselves to submit it to mediation before submitting any mediation request.

The significant features of the CAMP program are as follows:

- Cost is \$500 for a two-hour mediation session, to be split equally between the two parties.
- Both parties must complete the online mediation request form and pay \$250 by credit card.
- Upon receipt of both parties' completed forms and payment, both will be contacted by an assigned mediator within 30 days.
- Mediation will take place at a mutually agreed location on a mutually agreed date.
- Additional subsequent mediation can be requested by both parties and will be billed at \$300.00 per hour, split equally between the parties, and payable directly to the mediator, provided the mediator agrees to provide additional mediation services. (Just as in NC's Superior Court mediation program, a mediator may declare the mediation to be at an impasse and not warranting further expense for the parties).

An explanation of the program and access to application to submit to mediation is readily available on a sponsored website. A group of experienced community association professionals



have already agreed to perform services as mediator. They are available to work, as called upon, across the state.

This program is still new and needs more exposure. We would prefer to give the new program an opportunity to be perfected and to produce results before new statutory requirements are imposed. It does not at this time address the issue of arbitration.

Thank you for the opportunity to come and speak with you today. On behalf of CAI, I would hope that CAMP will be allowed to develop some experience that can be monitored and brought back in the form of a report to you or a similar group in the future. CAI and I stand ready to assist this Committee as it studies this issue.

Henry W. Jones, Jr.
Attorney at Law
Jordan Price Wall Gray Jones & Carlton, PLLC
1951 Clark Avenue
Raleigh, North Carolina 27605



waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) **Certification That Mediation Concluded.** — Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) **Time Periods Tolloed.** — Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) **[Other Remedies Not Affected.]** — Nothing in this section shall prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation.

History.

2010-169, s. 21(a).

section effective October 1, 2010, and applicable to actions filed on or after that date.

Editor's Note.

Session Laws 2010-169, s. 21(d), made this

The bracketed catchline in subsection (h) was inserted at the direction of the Revisor of Statutes.

§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association disputes.

(a) **Definitions.** — The following definitions apply in this section:

- (1) **Association.** — An association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.
- (2) **Dispute.** — Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree. The term "dispute" does not include matters expressly exempted in subsection (b) of this section.
- (3) **Executive board.** — The body, regardless of name, designated in the declaration to act on behalf of an association.
- (4) **Mediator.** — A neutral person who acts to encourage and facilitate a resolution of a dispute between an association and a member.
- (5) **Member.** — A person who is a member of an association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

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

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

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

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

- (1) **Attendance.** — The mediator shall determine who may attend mediation. The mediator may require the executive board or a large group of members to designate one or more persons to serve as their representatives in the mediation.
- (2) All parties are expected to attend mediation. The mediator may allow a party to participate in mediation by telephone or other electronic means if the mediator determines that the party has a compelling reason to do so.
- (3) If the parties cannot reach a final agreement in mediation because to do so would require the approval of the full executive board or the approval of a majority or some other percentage of the members of the association, the mediator may recess the mediation meeting to allow the executive board or members to review and vote on the agreement.

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

(f) **Costs of Mediation.** — The costs of mediation, including the mediator's fees, shall be shared equally by the parties unless otherwise agreed to by the



parties. Fees shall be due and payable at the end of each mediation meeting. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

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

(h) **Inadmissibility of Evidence.** — Evidence of statements made and conduct occurring during mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in a civil action arising from the dispute which was the subject of that mediation; except proceedings to enforce or rescind a settlement agreement reached at that mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation under this section.

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

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

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



Chapter launches mediation service for Boards, Owners

"the act or process of mediating; especially : intervention between conflicting parties to promote reconciliation, settlement, or compromise..."

Merriam-Webster

CAI-NC is proud to introduce a new public service designed to provide a faster and less expensive alternative to litigation.

This Community Association Mediation Program (CAMP) assists disputing parties in resolving their conflict through a neutral third party. The new program's goal is to provide a resolution framework for HOA or condo disputes between owners and their North Carolina association, and deliver an efficient, economic and fair proceeding for the parties.

Our mediators are experienced professionals in the field of association management or law. They work to facilitate discussions between a community Board representative and an owner toward a mutually acceptable outcome.

It's important that both parties to a dispute must agree between themselves to submit it to mediation before submitting any mediation request.

Highlights of the CAMP program:

- Cost is \$500 for a two-hour mediation session, to be split equally between the two parties.
- Both parties must complete the online mediation request form and pay \$250 by credit card.
- Upon receipt of both parties' completed forms and payment, both will be contacted by an assigned mediator within 30 days.
- Mediation will take place at a mutually agreed location on a mutually agreed date.
- Any additional subsequent mediation requested by both parties will be billed at \$300 per hour, split equally between the parties, and payable directly to the mediator; however, there is no obligation for the mediator to provide additional mediation.

For more information please visit http://bit.ly/MEDIATE_NC.

For member attorneys or PCAM-designated managers who may be interested in serving as a mediator, please email office@cai-nc.org.



**Comments to the Legislative Research Commission's Committee on
Dispute Resolution Options for Homeowners, Associations and Governing Entities
March 28, 2018**

Good afternoon. My name is Jim Slaughter. Thank you for inviting me to address the Committee.

By way of background, I'm a community association attorney with Black, Slaughter & Black, which has one of the state's largest HOA/condo practices. I was the first attorney in North Carolina inducted as a Fellow into the College of Community Association Lawyers (CCAL) and served as CCAL's 2014 national President. In addition I served as 2016 President of the North Carolina Chapter of the Community Associations Institute.

Since this meeting is about association disputes, I'll start by mentioning that almost all lawsuits filed in North Carolina's District or Superior Courts are currently sent to either mediation or arbitration. So that we're using the same terms—in a "mediation" the parties sit down with a neutral party and try to talk through and resolve their dispute. In an "arbitration" an independent third party is appointed to act like a judge and rules on the matter. These processes are called Alternative Dispute Resolution, or "ADR."

I strongly encourage ADR to parties in any dispute. Early in my career I heard many cases as a District Court arbitrator. I've been a certified Superior Court Mediator for over 20 years and participated in hundreds of mediations, whether as mediator or representing homeowners or associations. ADR often provides a faster and less expensive alternative to litigation. That said, in looking at the Committee's charge, I don't know how the General Assembly easily forces more dispute resolution on homeowners or associations that are not involved in litigation.

As to mediation, in 2010 the General Assembly enacted House Bill 278, which became NC General Statute § 7A-38.3F. That law mandates that community associations notify members each year of their right to request mediation. Mediation by its nature is voluntary. You can't mandate that parties settle a dispute. To require parties who are not in a lawsuit and do not wish to mediate to attend and pay for mediation—since mediation has costs—will increase costs to the homeowner and association, but likely places them no closer to a resolution of their dispute.

As to arbitration, parties can agree by contract to binding arbitration, but I don't believe that mandatory arbitration by statute could be anything other than non-binding, which means it's not final. The State Constitution guarantees the right to enforce or protect "private rights or the redress of private wrongs" in court. To require parties who are not in a lawsuit, have no agreement to arbitrate, and do not wish to arbitrate to attend and pay for an arbitration—since arbitration has costs—will increase costs to the homeowner and association, but likely places them no closer to a resolution of their dispute.

Disagreements between owners and community associations are private contract disputes. There is nothing to prevent mediation or arbitration if that is what the parties desire. Numerous mediation centers and private mediators across the state will hear association disputes. The North Carolina

Chapter of the Community Associations Institute¹ just launched its Community Association Mediation Program, where associations or owners can ask that any dispute be mediated at minimal cost. The mediators, who must be agreed to by the parties, include some of the most respected community association attorneys and managers in the state.

You likely will get requests to provide a free resolution process for HOA/condo owners. Any such process, whether free or not, will create additional work for community associations. Recognize that community associations are nonprofits and don't have extra funds for additional administrative obligations. Community associations exist through written contracts with owners to provide certain services, such as power, water, and insurance. Associations pay for those services through assessments from the owners. Association finances are pretty much a zero-sum game. Any cost to the association due to additional government regulation has to be passed on to the owners, resulting in higher costs for all residents.

And fundamentally, how are association owner disputes different than other contracts regarding real estate or anything else? In such matters, the parties are advised to try and work out differences and, if that isn't possible, to talk to an attorney or go to court. Also, if the state provided a free process for any association dispute, no matter how outlandish, how many owners would request that free assistance? Two per association? There are some 15,000 community associations in North Carolina. That would be 30,000 disputes, which is not something that could be handled without significant resources and infrastructure.

As the Committee hears from unhappy owners, keep in mind the many homeowners who are satisfied with their associations. Twenty vocal owners may show up today, but some 2.8 million residents live in associations. Unless 28,000 owners have complained, you haven't heard dissatisfaction from even 1% of residents. You likely won't hear more complaints because the General Assembly has set up a host of ways to resolve association disputes—most associations vote on leaders annually and there is a straightforward statutory process for removing unwanted board members. And there is no requirement that anyone continue to live in an association if they have become dissatisfied. Based on our state population of 10.8 million, more than 70% of the state doesn't reside in an association.

It's worth noting that Zogby surveys year after year show a vast majority of residents in associations are generally satisfied:

- 87% rate their overall community association experience as positive or neutral
- 88% say their association's rules protect and enhance property values or have a neutral effect
- 84% say that members of their elected governing board "absolutely" or "for the most part" serve the best interests of their communities

As this Committee examines changes to dispute resolution for owners and associations, I ask that you keep those satisfied owners in mind. With options for dispute resolution already in place, please don't create a process that adds complication for volunteer board members and adds new costs to owners and their associations.

¹ CAI is an international membership organization with 35,000 members that include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations.



**NEW
PROGRAM!**

Mediation Service for HOAs and Condos

CAI North Carolina (CAI-NC) announces a public service program to provide a faster and less expensive alternative to litigation— involving community associations (commonly referred to as homeowners associations and condominiums).

The Community Association Mediation Program (CAMP) assists disputing parties in resolving conflict through a neutral third-party. The program delivers a resolution framework for HOA or condo disputes between owners and their North Carolina community association—offering an efficient, economic, and fair proceeding for the parties to reach a mutually acceptable outcome.

CAMP highlights:

- Mediators are experienced professionals in the field of community association management or law.
- Two-hour mediation session is \$500 and split equally between the two parties.
- Both parties must complete online mediation request form and pay \$250 by credit card.
- A mediator is assigned within 30 days, upon receipt of both parties' completed forms and payment.
- Mediation takes place on a mutually agreed upon date and location.
- Additional mediation by both parties is \$300 per hour, split equally between the parties, and payable directly to the mediator. However, there is no obligation for the mediator to provide additional mediation.
- Parties to a dispute must agree to mediation before submitting any mediation request.

**For more information,
please visit http://bit.ly/MEDIATE_NC.**

CAI-NC member attorneys or PCAM designated managers interested in serving as a mediator, contact office@cai-nc.org.


NORTH CAROLINA CHAPTER
community
ASSOCIATIONS INSTITUTE

www.cai-nc.org | (919) 525-4993



Recommendations to Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities

March 28, 2018

This committee is charged with studying issues surrounding the creation of a mediation and arbitration board to resolve disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations.

Recommendations

First, there are a number of existing ADR programs in our state that can be used to provide the services needed in homeowner disputes. So establishing another board or entity to handle this particular type of disputes is not needed. There are not likely to be enough such disputes in each county or region to warrant creating such infrastructure and incurring such costs.

Second, in any program there needs to be an office or person that serves as "clerk of court", in other words, the person who collects complaints and forwards them to the mediator or arbitrator for resolution. Under the current statute 7A-38.3F the Dispute Resolution Commission serves as one of the collectors of complaints. The Commission's primary function is to regulate the practice of mediation in our state courts. It does not collect cases and then select the mediator who will handle each case. The Commission should be relieved of such a role which is not consistent with its primary charge. The existing programs suggested below do have such "clerks of court" in place.

Third, one of the features that has made mediation the amazing success it has been in our state trial courts is its mandatory nature. Parties are required to attend and participate. Requiring participation is not unduly burdensome, particularly if the cost is kept low. Although participation may be required, any resolution will be only by agreement of the parties and with their consent. If the mediation does not work, either party can still proceed to court or any other venue currently available to resolve their dispute.

Fourth, using highly trained and highly skilled certified mediators from the Mediated Settlement Conferences in Superior Court program is not a cost effective way of handling these neighborhood disputes. These disputes are more akin to the barking dog and improperly parked car disputes that are the bread and butter of local dispute settlement centers, most of whom are part of the Mediation Network of NC. These centers use trained, experienced volunteer mediators and can provide this service at a much lower cost than MSC certified mediators. The parties could be able to hire an MSC mediator if they choose to pay that additional cost.

Fifth, if arbitration is an alternative that the legislature believes would be effective in this arena, then the parties can be given access to the District Court Non-binding Arbitration program (7A-37.1). While the usual case in that program is referred by the trial court after a complaint has been filed, a structure can be developed allowing these homeowner cases direct access to



arbitration without having first filed a complaint in court. I think the Commission would be happy to assist in designing such a mechanism.

Both mediation and non-binding arbitration preserves the right of all parties to have the dispute heard in court before a judge or jury. But history has shown that these programs have a high settlement rate and a high satisfaction rate. Even if the parties do not get all that they wanted, they are glad of the opportunity to resolve the matter privately and get the dispute behind them. If both arbitration and mediation are to be offered in this new program, this Committee could consider having the person bringing the dispute to the ADR program would choose either mediation or arbitration. The responding party would be required to participate, but would have the option of choosing the other resolution method if they want. The parties would equally split the cost of the process unless they agree to a different payment plan. The arbitration cost is fixed in the statute at \$100. A similar fee could be fix for the mediation process.

If I can be of any assistance, I would be happy to help.

Frank Laney
Mediator
Cary NC
919-469-2853
frank_laney@ca4.uscourts.gov

Disclaimer: I was invited to speak on behalf of the dispute Resolution Commission. However, the Commission has not had time to examine this issue and develop a response or suggestion. I am speaking on my own behalf. However, I have been involved in design and implementation of dispute resolution systems in the NC courts and other venues in our state over 30 years. I was a leader in the design and implantation of all of the court based and most of the ono-court based dispute resolution systems in our state. I currently work for the US Courts as a mediator, but I do not speak for them.



NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

May 24, 2018

MEMORANDUM

TO: Members, Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017)
FROM: Sen. Dan Bishop, Co-Chair
Rep. Sarah Stevens, Co-Chair
SUBJECT: Meeting Notice

The Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017) will meet at the following time:

DAY	DATE	TIME	LOCATION
Wednesday	April 11, 2018	11:00 AM	421 LOB

Parking for non-legislative meeting attendees is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Ann Luck at annlu@ncleg.net.

cc: Committee Record X
Interested Parties X





Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC) 2017
April 11, 2018
MINUTES

The Legislative Research Commission on Dispute Resolution Options for Homeowners, Associations and Governing Entities met on Wednesday, April 11, 2018 at 11:00 am, in Room 421 of the Legislative Office Building. Members present were Chairs: Representative Sarah Stevens and Senator Dan Bishop; Committee members present were: Senators Bill Cook and Joel Ford and Representatives Elmer Floyd, Holly Grange, and Rodney Moore. Staff present were Amy Darden and Bill Patterson of the Legislative Analysis Division and Matthew Meinig of Bill Drafting. A copy of the Agenda, Attendance, and Visitor Registration is attached to these minutes, (Attachment 1 - 3).

Representative Stevens called the meeting to order and thanked Committee Members, Sergeant at Arms, and Staff who would be assisting with the meeting for their attendance.

Committee Discussion of Draft Report

Rep. Stevens recognized Amy Darden of Legislative Analysis who stated that basically, the report is a summary of the prior meeting. All the handouts that were provided in that meeting are attached with the voted on recommendation asking the LRC to reconstitute this Committee after the next session, (Attachment 4).

Following these comments, Rep. Stevens stated that Sen. Bishop would be presiding over this portion of the meeting. Sen. Bishop then recognized Rep. Stevens to bring forth an amendment for the Committee to consider, (Attachment 5). Rep. Stevens then stated that in as much as we have done a lot of hard work and listened to some people, we believe that there could be greater study and discussion done by allowing the Program Evaluation Division to study this issue.

We would like for them to consider:

1. How the potential financial burdens of ADR methods should be allocated among the parties
2. Whether the ADR process should be binding upon the parties
3. Whether a body should be established to administer ADR matters
4. What role the State should have in establishing a framework for managing these disputes

This amendment would revise the recommendation to read as follows, "Therefore, the Committee recommends the enactment of Legislative Proposal #1". The amendment will also incorporate the proposed legislation as set forth in the amendment. Following this explanation, Rep. Stevens moved for the adoption of the amendment. This motion was seconded by Rep. Moore.



Sen. Ford – For clarification, are we doing away with this Committee and then passing it along to Program Evaluation?

Rep. Stevens – This Committee terminates and we would have to get special permission to reconstitute this body for that limited purpose and PED can do a greater evaluation in a shorter amount of time.

Sen. Ford – Again for clarity, your amendment is going to do away with this Committee because the recommendation, from my understanding, is to extend this existing Committee so we can have more time to further evaluate what the charge is.

Rep. Stevens – All we can do as a Committee was recommend that we be extended.

Rep. Floyd – I support this amendment but want to pass on a suggestion. I would like to pass on to the Program Evaluation Division that they should communicate with the Office of Administrative Hearings and the Human Relations Commission because they deal with fair housing. I feel that they should be a possible part of this recommendation.

Rep. Moore – My understanding is that this particular Committee has had one meeting and now we are moving to dissolving this Committee and we are moving it on to the Program Evaluation Division process. How likely is it that we will continue to proceed on this matter because this is a very far reaching matter? I thought that this Committee would take a look at it and take more time.

Rep. Stevens – I appreciate your comments and I am hoping that PED can look into it much further but I think the issue is much broader than just arbitration or mediation. It is what kind of issues would go in there and what kind of groups would do it and I think they would have a greater time to study it and bring it back to us with recommendations. I would defer to Staff as to whether or not they think that PED will take this matter up.

Bill Patterson, Legislative Analysis – The recommended proposal directs PED to take up the study so they will study it. Whatever recommendations they come up with then the General Assembly could take those recommendations and refer them to a specific committee for study or be the topic of another LRC study. There are any number of ways in which it could come back before a committee.

Rep. Moore – What would be the time frame from this particular meeting to possible recommendations from PED?

Bill Patterson, Legislative Analysis – All I can tell you is that as recommended in the proposed legislation PED would report its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee on or before October 18, 2018. By that date there would be a report.

Sen. Ford – I understand the time limitations and the restraints we have to actually do something but we've gone from asking for more time to dissolving this Committee and essentially we are punting this issue. We have been sent up here to do a job and I feel that we are not doing our job and we are passing the buck for someone else to do our job. Help me with your amendment and where your mind is as it relates to now asking for this particular issue to go to another committee.

Sen. Bishop – The issue of HOA governances is sort of a perennial issue and a number of folks who are members of the public who have provided input to us have commented that there is a much more



comprehensive look at this in a study done in 2012 and there has been some legislation since then. It is an issue that continues to attract attention. Sen. Ford, I would say to your characterization of what made leadership decide to study this is the fact that it was one of the items in the study bill. I have some misgivings myself and was not involved in the item when it was put into the study bill. I have misgivings about how the issue was defined in the study bill and whether it was sufficiently broad and whether it was hitting the right issue. The General Assembly passed that on but where it came from, I don't know. All of us on this Committee have had an opportunity to offer input and ask for people to be present. We have had a good meeting and discussion where folks gave a lot of helpful comment and we learned a good bit so I think the question that falls to all of us is what the best way to proceed is. Either this Committee goes away automatically or we do something else to further the process. We could wait for another study bill with a better formed study item. The original idea was to continue the life of this Committee but Rep. Stevens is proposing an alternative that I believe she thinks is more likely to result in a serious examination of the issue.

Rep. Stevens – What we have learned is that there are thousands of HOAs and there are many ways they resolve or handle disputes or go to court. We have to wrap up this Committee by a date certain so would you prefer that we do nothing and we come back after session assuming we can get reconstituted or would you prefer that there is someone who is continuing to study it right now and bring us a report by October 18, 2018. I think that having that in depth input from Program Evaluation, which does these things, is going to get a lot more in depth than we are. They are going to give us a lot more information to consider.

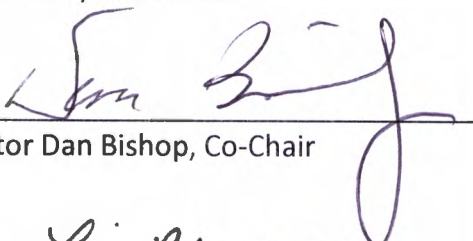
Sen. Ford – You mentioned a date which gives me more clarity. What date did you state because it is not in the amendment.

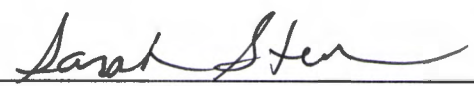
Rep. Stevens – It is on the back page of the amendment.

Following this discussion, Rep. Stevens again moved for the adoption of the amendment and was seconded by Rep. Moore. Sen. Bishop called for a vote, the ayes carried, and the draft report has been amended. Sen. Bishop then recognized Rep. Stevens who moved for the adoption of the draft report as amended authorizing staff to prepare the final report as amended, correct any typographical errors, and revise the "Committee Proceedings" section on page 11 to reflect the action taken at today's meeting. Rep. Moore seconded this motion. There being no questions or comments from members, Sen. Bishop called for a vote on the adoption of the report. The ayes carried and the draft report as amended has been approved.

There being no further business before the Committee, Senator Bishop adjourned the meeting.

Respectfully submitted:


Senator Dan Bishop, Co-Chair


Representative Sarah Stevens, Co-Chair


Lisa Brown, Committee Assistant



Attachments:

1. Agenda
2. Attendance
3. Visitor Registration
4. Draft Final Report
5. Amendment – Rep. Stevens





LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON DISPUTE RESOLUTION OPTIONS FOR HOMEOWNERS, ASSOCIATIONS AND GOVERNING ENTITIES

April 11, 2018

Rm. 421 LOB

Rep. Sarah Stevens, Presiding

Committee Co-Chairs

Rep. Sarah Stevens

Sen. Dan Bishop

Legislative Members

Rep. Elmer Floyd

Rep. Holly Grange

Rep. Destin Hall

Rep. Rodney Moore

Sen. Bill Cook

Sen. Rick Gunn

Sen. Andy Wells

Sen. Joel Ford

Ex Officio Members

Rep. David R. Lewis

Sen. Bill Rabon

I. Welcome & Opening Remarks

Representative Sarah Stevens, Co-Chair

Senator Dan Bishop, Co-Chair

II. Committee Discussion of Draft Report

III. Adjourn







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... the ... of the ...
... the ... of the ...



VISITOR REGISTRATION SHEET

Committee on Dispute Resolution Options for
Homeowners, Associations and Governing Entities

April 11, 2018

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Susanna Hailey

NC REALTORS

Alex Miller

AMGA

Henry Jones

Jordan Price

Jim Slaughter

Attorney
Black, Slaughter & Black, PA

JEFF SONKER

PBS CHARLOTTE - WTUV

DUUG STACKEE

"

Ruth Merkle

LA

Jerry Morton

5423 Brushy Meadows DR FV



Homeowners, Associations and Governing Entities

Name of Committee

April 11, 2018

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Rhaegon Jackson

Focus Caroline

Alice Mahood

Senator Terry Van Duyen





Joint Committee

ON

Dispute Resolution Options for Homeowners and Assoc and Governing Entities

April 11, 2018 – 11:00 AM

Room 421

Senate Sergeant at Arms:

TERRY BARNHARDT

LINDA MATTHEWS

House Sergeant at Arms:

DOUG HARRIS

WARREN HAWKINS

MALACHI MCCULLOUGH



NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



April 11, 2018

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2018 Regular Session of the 2017 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017), pursuant to G.S. 120-30.17(1).

Senator Dan Bishop
Co-Chair

Representative Sarah Stevens
Co-Chair

Committee on Dispute Resolution Options for Homeowners, Associations and Governing
Entities (LRC) (2017)
Legislative Research Commission

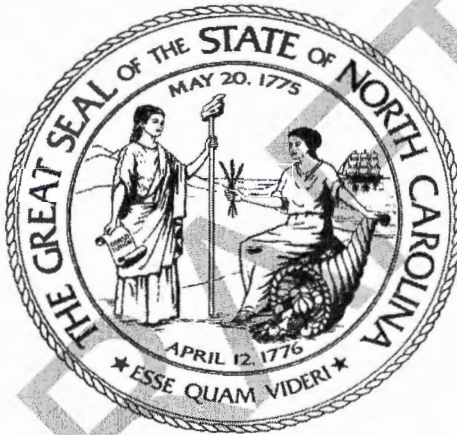
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LEGISLATIVE RESEARCH COMMISSION

**COMMITTEE ON DISPUTE RESOLUTION
OPTIONS FOR HOMEOWNERS,
ASSOCIATIONS AND GOVERNING
ENTITIES (LRC)(2017)**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2018 SESSION
of the
2017 GENERAL ASSEMBLY
OF NORTH CAROLINA**

APRIL 11, 2018

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TELEPHONE: (919) 733-9390

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TRANSMITTAL LETTER

April 11, 2018

TO THE MEMBERS OF THE 2018 REGULAR SESSION
OF THE 2017 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2018 Regular Session of the 2017 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017), pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Senator Bill Rabon

Representative David Lewis

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2017 – 2018

Senator Harry Brown
Co-Chair

Representative David Lewis
Co-Chair

Senator Phil Berger, Ex Officio

Representative Timothy Moore, Ex
Officio

Senator Dan Blue
Senator Warren Daniel
Senator Ralph Hise
Senator Paul A. Lowe, Jr.

Representative William Brawley
Representative Becky Carney
Representative Ted Davis, Jr.
Representative Jason Saine

DRAFT

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017), under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Dan Bishop and Representative Rep. Sarah Stevens, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 2017-2018 biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities (LRC)(2017) met 2 times after the 2017 Regular Session. The Committee's Charge can be found [here](#).

Informational materials and resources for each committee meeting are posted online at <http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=386>. The detailed minutes from each Committee meeting are available in the Legislative Library.

The following is a brief summary of the Committee proceedings:

March 28, 2018

The first meeting was held on Wednesday, March 28, 2018, at 1:00 p.m. in Room 421 of the Legislative Office Building, with Representative Sarah Stevens, Co-Chair, presiding. After hearing its charge, the committee received presentations from the following persons:

- Ole Madsen, HEAR4NC, Inc.
- Henry W. Jones, Jr., North Carolina Chapter of Community Associations, Institute
- Jim Slaughter, Black, Slaughter & Black, PA
- Frank Laney, N.C. Dispute Resolution Commission
- Janice Almond, Immediate Past Board Chair, Mediation Network of North Carolina

After discussion, the committee voted to recommend that the Legislative Research Commission reconstitute the committee to continue studying the subject of its charge in the interim after the 2018 Short Session, including ways to encourage all parties to these types of disputes to engage in prelitigation alternative dispute resolution, such as by awarding attorneys fees to the prevailing party.

Committee staff was instructed to prepare a draft report for adoption at the next meeting of the committee.

April 11, 2018

The Committee held its second meeting on Wednesday, April 11, 2018, at 11:00 a.m. with Representative Sarah Stevens, Co-Chair, presiding. At this meeting the Committee approved its final report.

FINDINGS AND RECOMMENDATIONS

The Legislative Research Commission Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities finds that:

- More study is needed to determine the feasibility of creating a mediation and arbitration board to resolve disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations.
- Study is also needed to determine if there are additional means by which associations and property owners could be further incentivized to use alternative dispute resolution in these disputes, such as by providing for an award of attorneys fees.

Therefore, the Committee recommends that:

- The Legislative Research Commission reconstitute the Committee during the interim following the 2018 Short session to continue its study of the issue stated in its charge, including a consideration of other means by which the use of alternative dispute resolution in these types of disputes can be encouraged, such as by providing for an award of attorneys fees.

COMMITTEE MEMBERSHIP

2017-2018

Senate Members:

Senator Dan Bishop, Co-Chair

Senator Bill Cook
Senator Joel D. M. Ford
Senator Rick Gunn
Senator Andy Wells
Senator Bill Rabon, Ex Officio

House of Representatives Members:

Representative Sarah Stevens, Co-Chair

Representative Elmer Floyd
Representative Holly Grange
Representative Destin Hall
Representative Rodney W. Moore
Representative David R. Lewis, Ex Officio

DRAFT

COMMITTEE CHARGE

Pursuant to S.L. 2017-211, the Committee shall study issues surrounding the creation of a mediation and arbitration board to resolve disputes between the owners of property located in a homeowners or property owners association and the governing entities of such homeowners or property owners associations.

DRAFT

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

SUPPORTING DOCUMENTS

- Ole Madsen presentation
- Henry W. Jones, Jr. presentation
- James H. Slaughter presentation
- Frank Laney presentation

DRAFT



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

U-ATG-72 [v.4]

AMENDMENT NO. _____
(to be filled in by
Committee Clerk)

Page 1 of 2

Amends Title [NO]
Draft Report

Date _____, 2018

Representative Stevens

1 moves to amend the Draft Report of the Legislative Research Commission Committee on Dispute
2 Resolution Options for Homeowners, Associations and Governing Entities on page 12, by
3 deleting the existing text following the caption "Findings and Recommendations" in its entirety,
4 and substituting the following in its place:

5
6 "The Legislative Research Commission Committee on Dispute Resolution Options for
7 Homeowners, Associations and Governing Entities finds that more study is needed of
8 alternative dispute resolution (ADR) methods for disputes arising between property owners and
9 property owners associations, and their respective governing entities, and that the Program
10 Evaluation Division should be directed to undertake this study, which should include
11 consideration of:

- 12
13 1. How the potential financial burdens of ADR methods should be allocated among the
14 parties;
15 2. Whether the ADR process should be binding upon the parties;
16 3. Whether a body should be established to administer ADR matters; and
17 4. What role the State should have in establishing a framework for managing disputes.
18

19 Therefore, the Committee recommends the enactment of Legislative Proposal #1."; and

20 on pages 15 and 16, by inserting the following Legislative Proposal between those pages;
21
22

"LEGISLATIVE PROPOSAL #1

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

H

D

BILL DRAFT 2017-MQz-135 [v.3]

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
04/04/2018 03:44:26 PM**



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**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT**

AMENDMENT NO. _____
(to be filled in by
Committee Clerk)

U-ATG-72 [v.4]

Page 2 of 2

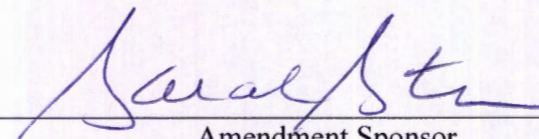
Short Title: LRC- HOA Dispute Resolution/PED Study. (Public)

Sponsors: Representative Stevens.

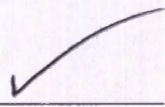
Referred to: _____

- 1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE PROGRAM EVALUATION DIVISION TO STUDY THE
3 CREATION OF A PROCESS FOR MEDIATION, ARBITRATION, OR OTHER
4 ALTERNATIVE DISPUTE RESOLUTION METHODS FOR DISPUTES ARISING
5 BETWEEN PROPERTY OWNERS AND PROPERTY OWNERS ASSOCIATIONS, AND
6 THEIR RESPECTIVE GOVERNING ENTITIES, AS RECOMMENDED BY THE
7 LEGISLATIVE RESEARCH COMMISSION.
8 The General Assembly of North Carolina enacts:
9 **SECTION 1.** The Joint Legislative Program Evaluation Oversight Committee shall
10 include in the work plan of the Program Evaluation Division an evaluation of possible alternative
11 dispute resolution (ADR) methods, including arbitration and mediation, for disputes arising
12 between property owners and property owners associations, and their respective governing
13 entities. The study shall determine the following: (i) the potential financial burdens of ADR
14 methods and which party should bear the burden; (ii) whether the ADR process should be binding
15 upon the parties; (iii) whether a body should be established to administer ADR matters; and (iv)
16 what role the State should have in establishing a framework for managing disputes. The Program
17 Evaluation Committee shall report its findings and recommendations to the Joint Legislative
18 Program Evaluation Oversight Committee on or before October 1, 2018.
19 **SECTION 2.** This act is effective when it becomes law."

SIGNED


Amendment Sponsor

ADOPTED



FAILED

TABLED

