

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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BILL DRAFT 2023-NKz-85 [v.18]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Various Changes to Homeowners' Assoc. Laws.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA CONDOMINIUM ACT AND THE NORTH CAROLINA PLANNED COMMUNITY ACT, TO MANDATE PRELITIGATION MEDIATION OF DISPUTES BETWEEN OWNERS' ASSOCIATIONS AND THEIR MEMBERS, AND TO REQUIRE THE DEPARTMENT OF JUSTICE TO COLLECT AND REPORT ON COMPLAINTS SUBMITTED TO IT INVOLVING SUCH DISPUTES, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS' ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. ASSOCIATION RECORDS

SECTION 1.(a) G.S. 47C-3-118 reads as rewritten:

"§ 47C-3-118. Association records.

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify a shorter time, the association shall make the requested records reasonably available for examination within 30 days of receiving the unit owner's written request. Except as otherwise provided in the bylaws, the association is not required to make available for examination financial records created more than three years before the date on which the association receives the unit owner's written request. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

...."



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1 **SECTION 1.(b)** G.S. 47F-3-118 reads as rewritten:

2 "**§ 47F-3-118. Association records.**

3 (a) The association shall keep financial records sufficiently detailed to enable the
4 association to comply with this Chapter. All financial and other records, including records of
5 meetings of the association and executive board, shall be made reasonably available for
6 examination by any lot owner and the lot owner's authorized agents as required in the bylaws and
7 Chapter 55A of the General Statutes. If the bylaws do not specify a shorter time, the association
8 shall make records reasonably available for examination within 30 days of receiving the lot
9 owner's written request. Except as otherwise provided in the bylaws, the association is not
10 required to make available for examination financial records created more than three years before
11 the date on which the association receives the lot owner's written request. If the bylaws do not
12 specify particular records to be maintained, the association shall keep accurate records of all cash
13 receipts and expenditures and all assets and liabilities. In addition to any specific information
14 that is required by the bylaws to be assembled and reported to the lot owners at specified times,
15 the association shall make an annual income and expense statement and balance sheet available
16 to all lot owners at no charge and within 75 days after the close of the fiscal year to which the
17 information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit
18 of the association's books and records for the current or immediately preceding fiscal year may
19 be required by a vote of the majority of the executive board or by the affirmative vote of a
20 majority of the lot owners present and voting in person or by proxy at any annual meeting or any
21 special meeting duly called for that purpose.

22 "

23
24 **PART II. COMMON EXPENSE LIABILITY**

25 **SECTION 2.(a)** G.S. 47C-3-103 reads as rewritten:

26 "**§ 47C-3-103. Executive board members and officers.**

27 ...

28 (c) Within 30 days after adoption of any proposed budget for the condominium, the
29 executive board shall provide a summary of the budget to all the unit owners, and shall set a date
30 for a meeting of the unit owners to consider ratification of the budget not less than 10 nor more
31 than 60 days after mailing of the summary. There shall be no requirement that a quorum be
32 present at the meeting. Except as otherwise provided in subsection (c1) of this section, The
33 budget is ratified unless at that meeting a majority of all the unit owners or any larger vote
34 specified in the declaration rejects the budget. In the event the proposed budget is rejected, the
35 periodic budget last ratified shall be continued until such time as the unit owners ratify a
36 subsequent budget proposed by the executive board.

37 (c1) Ratification of a proposed budget that would increase the previous year's common
38 expense liability by more than ten percent (10%) requires the approval of a majority of all the
39 unit owners or any larger vote specified in the declaration, unless the amount of the increase is
40 expressly authorized in the declaration. After ratification of the budget, no action may be taken
41 by the executive board that would increase the budgeted common expense liability for that fiscal
42 year by more than five percent (5%) without the approval of a majority of all the unit owners or
43 any larger vote specified in the declaration.

44 "

45 **SECTION 2.(b)** G.S. 47F-3-103 reads as rewritten:

46 "**§ 47F-3-103. Executive board members and officers.**

47 ...

48 (c) Within 30 days after adoption of any proposed budget for the planned community,
49 the executive board shall provide to all the lot owners a summary of the budget and a notice of
50 the meeting to consider ratification of the budget, including a statement that the budget may be
51 ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to

1 consider ratification of the budget, such meeting to be held not less than 10 nor more than 60
 2 days after mailing of the summary and notice. There shall be no requirement that a quorum be
 3 present at the meeting. Except as otherwise provided in subsection (c1) of this section, The
 4 budget is ratified unless at that meeting a majority of all the lot owners in the association or any
 5 larger vote specified in the declaration rejects the budget. In the event the proposed budget is
 6 rejected, the periodic budget last ratified by the lot owners shall be continued until such time as
 7 the lot owners ratify a subsequent budget proposed by the executive board.

8 (c1) Ratification of a proposed budget that would increase the previous year's common
 9 expense liability by more than ten percent (10%) requires the approval of a majority of all the lot
 10 owners or any larger vote specified in the declaration, unless the amount of the increase is
 11 expressly authorized in the declaration. After ratification of the budget, no action may be taken
 12 by the executive board that would increase the budgeted common expense liability for that fiscal
 13 year by more than five percent (5%) without the approval of a majority of all the lot owners or
 14 any larger vote specified in the declaration.

15"

16 17 **PART III. NONJUDICIAL FORECLOSURE**

18 **SECTION 3.(a)** G.S. 47C-3-116 reads as rewritten:

19 "**§ 47C-3-116. Lien for sums due the association; enforcement.**

20 ...

21 (f) Except as provided in subsection (h) of this section, the association, acting through
 22 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
 23 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,
 24 if the assessment remains unpaid for 90 days or more. The association shall not foreclose the
 25 claim of lien unless all the following conditions are met:

26 (1) ~~the~~The executive board votes to commence the proceeding against the specific
 27 unit.

28 (2) The amount of the lien is equal to or greater than six months of assessments
 29 or equal to or greater than two thousand five hundred dollars (\$2,500.00),
 30 whichever is less.

31 (3) The association offered the unit owner a reasonable opportunity to cure the
 32 default by making payments under an installment schedule as authorized
 33 under subsection (i) of this section, and the unit owner either did not accept
 34 the offer or defaulted on payments required under the agreed installment
 35 schedule.

36 (f1) The following provisions and procedures shall be applicable to and complied with in
 37 every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and
 38 procedures shall control to the extent they are inconsistent or in conflict with the provisions of
 39 Article 2A of Chapter 45 of the General Statutes:

40 ...

41"

42 **SECTION 3.(b)** G.S. 47F-3-116 reads as rewritten:

43 "**§ 47F-3-116. Lien for sums due the association; enforcement.**

44 ...

45 (f) Except as provided in subsection (h) of this section, the association, acting through
 46 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
 47 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes,
 48 if the assessment remains unpaid for 90 days or more. The association shall not foreclose the
 49 claim of lien unless all the following conditions are met:

50 (1) ~~the~~The executive board votes to commence the proceeding against the specific
 51 lot.

1 (2) The amount of the lien is equal to or greater than six months of assessments
 2 or equal to or greater than two thousand five hundred dollars (\$2,500.00),
 3 whichever is less.

4 (3) The association offered the lot owner a reasonable opportunity to cure the
 5 default by making payments under an installment schedule as authorized
 6 under subsection (i) of this section, and the lot owner either did not accept the
 7 offer or defaulted on payments required under the agreed installment schedule.

8 (f1) The following provisions and procedures shall be applicable to and complied with in
 9 every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and
 10 procedures shall control to the extent they are inconsistent or in conflict with the provisions of
 11 Article 2A of Chapter 45 of the General Statutes:

12 ...

13 "

15 **PART IV. PRE-LITIGATION MEDIATION**

16 **SECTION 4.(a)** G.S. 7A-38.3F reads as rewritten:

17 **"§ 7A-38.3F. Prelitigation mediation of condominium and ~~homeowners~~owners' association**
 18 **disputes.**

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

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

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

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

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

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

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

35 (a1) Disputes related solely to a member's failure to timely pay an association assessment
 36 or any fines or fees associated with the levying or collection of an association assessment are not
 37 covered under this section.

38 (b) ~~Voluntary Prelitigation-Mediation. – Prior to filing a civil action, the~~The parties to a
 39 dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act),
 40 Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an
 41 association's declaration, bylaws, or rules and regulations ~~are encouraged to initiate mediation~~
 42 pursuant to this section. may agree at any time to mediation of the dispute pursuant to this section.
 43 ~~However, disputes related solely to a member's failure to timely pay an association assessment~~
 44 ~~or any fines or fees associated with the levying or collection of an association assessment are not~~
 45 ~~covered under this section.~~

46 (b1) Mandatory Prelitigation Mediation. – Prior to filing a civil action arising under
 47 Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the
 48 General Statutes (North Carolina Planned Community Act), or an association's declaration,
 49 bylaws, or rules and regulations, a party shall initiate mediation pursuant to this section. If an
 50 action is initiated, it shall, upon the motion of any party prior to trial, be dismissed without
 51 prejudice by the court unless any one or more of the following apply:

- 1 (1) The nonmoving party has satisfied the requirements of this section, and this
2 fact is indicated in the mediator's certification issued under subsection (g) of
3 this section.
- 4 (2) The court finds that a mediator failed to issue a mediator's certification under
5 subsection (g) of this section indicating that the nonmoving party satisfied the
6 requirements of this section.
- 7 (3) The court finds good cause for a failure to attempt mediation. Good cause
8 includes a determination that the time delay required for mediation would
9 likely result in irreparable harm or that injunctive relief is otherwise
10 warranted.

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

22 (d) Mediation Procedure. – The following procedures shall apply to mediation under this
23 section:

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

36 ~~(e) Decline Mediation. – Either party to a dispute may decline mediation under this~~
37 ~~section. If either party declines mediation after mediation has been initiated under subsection (e)~~
38 ~~of this section but mediation has not been held, the party declining mediation shall inform the~~
39 ~~mediator and the other party in writing of his or her decision to decline mediation. No costs shall~~
40 ~~be assessed to any party if either party declines mediation prior to the occurrence of an initial~~
41 ~~mediation meeting.~~ Waiver of Mediation. – The parties to a dispute may agree to waive mediation
42 required by this section by informing the mediator of the waiver in writing.

43 (f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be
44 shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and
45 payable at the end of each mediation meeting. A mediator may charge a reasonable fee, as
46 applicable, to prepare a mediator's certification required under subsection (g) when parties to a
47 dispute agree to waive mediation pursuant to subsection (e) of this section or when one or more
48 parties failed or refused without good cause to attend the mediation meetings or otherwise
49 participate in the mediation. When an attorney represents a party to the mediation, that party shall
50 pay ~~his or her~~ the attorneys' fees.

1 (g) Certification That Mediation Concluded. – Upon a waiver of the mediation under
2 subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a
3 certification stating the date on which the mediation was concluded and a statement of the general
4 results of the mediation, including, as applicable, that the parties waived the mediation, that an
5 agreement was ~~reached~~ ~~or reached~~, that mediation was attempted but an agreement was not
6 ~~reached~~ ~~reached~~, or that one or more parties failed or refused without good cause to attend the
7 mediation meetings or otherwise participate in the mediation. If both parties participate in
8 mediation and a cause of action involving the dispute mediated is later filed, either party may file
9 the certificate with the clerk of court, and the parties shall not be required to mediate again under
10 any provision of law. The Supreme Court may adopt additional rules and standards to implement
11 this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which
12 mediation was attempted under this section. The sanctions in G.S. 7A-38.1(g) do not apply to
13 prelitigation mediation conducted under this section.

14 ...

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

22 SECTION 4.(b) This section becomes effective October 1, 2024, and applies to
23 actions filed on or after that date.

24 25 PART V. DEPARTMENT OF JUSTICE TO COLLECT AND REPORT ON OWNERS' 26 ASSOCIATION COMPLAINTS

27 SECTION 5.(a) Article 1 of Chapter 114 of the General Statutes is amended by
28 adding a new section to read:

29 "§ 114-8.8. Collection and Report of Owners' Association Complaint Data.

30 (a) The Department of Justice shall receive and record data from all complaints
31 concerning disputes between associations of unit owners or lot owners and their members as
32 required by this section. The Department of Justice shall publish a complaint form providing for
33 electronic submission of those complaints on its website. When the Department receives a
34 complaint via phone, mail, or online submission, it shall collect the following information from
35 the complainant:

- 36 (1) The name and contact information of the complainant.
- 37 (2) Whether the complainant is an association of unit owners or lot owners, or is
38 a unit owner or lot owner belonging to those associations.
- 39 (3) The name and contact information of the other party or parties to the dispute
40 giving rise to the complaint.
- 41 (4) The name, address, and contact information of the association management
42 company, if any, involved in the dispute.
- 43 (5) Details on whether the association member involved in the dispute (i) was
44 informed of the requirement of membership in the association as a condition
45 of unit or lot ownership, and if so informed, when and by whom; (ii) received
46 a copy of the governing documents of the association before obtaining title to
47 the property; (iii) was denied access to the association's governing documents;
48 and (iv) understood the rights and obligations of owners and the association
49 under the governing documents.
- 50 (6) The nature of the complaint.

- 1 (7) The background information regarding the dispute including whether the
2 member and association communicated about the dispute and whether all
3 other remedies available under the association's governing documents were
4 exhausted before the complaint was made.
- 5 (8) The complainant's understanding of the rights and obligations under the
6 association's governing documents as they relate to the dispute.
- 7 (9) The complainant's desired remedy regarding the dispute.
- 8 (b) Upon receiving the complaint, the Department shall provide a copy of the complaint
9 to the party complained against informing the party of the complaint made against it and allowing
10 for the party to respond.
- 11 (c) The Department shall publish the following information on its website:
- 12 (1) Information on the process to submit complaints pursuant to this section.
- 13 (2) Information about the laws and documents governing associations of unit
14 owners and lot owners in North Carolina.
- 15 (3) General information about roles, rights, and responsibilities of associations of
16 unit owners and lot owners, their members, and other related parties.
- 17 (4) Any other information the Department deems relevant to understanding the
18 rights and obligations of associations of unit owners and lot owners and
19 members of such associations.
- 20 (d) The Department is prohibited from promulgating regulations or issuing guidelines
21 concerning the administration, governance, or governing documents of associations of unit
22 owners or lot owners. The Department shall not serve as an arbiter in disputes between an
23 association of unit owners or lot owners and its members.
- 24 (e) By July 1 of each year, the Department shall submit a report to the House Standing
25 Committee on Commerce, the Senate Standing Committee on Commerce and Insurance, and the
26 Fiscal Research Division and shall also publish the report on its website. The report shall include,
27 at a minimum, a summary of all of the following:
- 28 (1) The total number of complaints received pursuant to this section.
- 29 (2) The number of those complaints submitted by unit owners or lot owners.
- 30 (3) The number of those complaints submitted by associations of unit owners or
31 lot owners.
- 32 (4) The number of complaints originating in each county of this State.
- 33 (5) The number of complaints that involved association management companies.
- 34 (6) The nature of the disputes reflected in the complaints including:
- 35 a. Access to association records.
- 36 b. Access to executive board meetings.
- 37 c. Assessments.
- 38 d. Executive board transparency.
- 39 e. Fines.
- 40 f. Collections of delinquent accounts.
- 41 g. Liens.
- 42 h. Foreclosures.
- 43 i. Content of restrictive covenants.
- 44 j. Enforcement of restrictive covenants.
- 45 (7) A ranking of the top five disputes based on the nature of the dispute reflected
46 in the complaints.
- 47 (8) The number of responses to the complaints received by the Department.
- 48 The information summarized in the report must be categorized, filterable, and searchable. The
49 Department must redact any personal or private information from the report, such as names,
50 addresses, and telephone numbers of individuals. This redaction requirement does not apply to

1 information concerning a homeowners' association or a homeowners' association management
2 company."

3 **SECTION 5.(b)** This section becomes effective July 1, 2024.

4
5 **PART VI. EFFECTIVE DATE**

6 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
7 law.

DRAFT