

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 805

Short Title: Prevent Abusive HOA Foreclosure Practices. (Public)

Sponsors: Representatives Longest, Setzer, and Liu (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Rules, Calendar, and Operations of the House

April 19, 2023

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ALTERNATIVE DISPUTE RESOLUTION THROUGH  
MEDIATION OR ARBITRATION BEFORE A PARTY CAN BEGIN LEGAL  
PROCEEDINGS, INCLUDING FILING A CLAIM OF LIEN, FOR CERTAIN UNIT  
OWNER ASSOCIATION DISPUTES AND CERTAIN LOT OWNER ASSOCIATION  
DISPUTES.

The General Assembly of North Carolina enacts:

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

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

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

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

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



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

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

14   "**§ 47C-3-116. Lien for sums due the association; enforcement.**

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

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

37       ...."

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

39   "**§ 47F-3-107.1. Procedures for fines and suspension of planned community privileges or**  
 40   **services.**

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

1 shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of  
2 planned community privileges or services should be imposed, the suspension may be continued  
3 without further hearing until the violation or delinquency is cured. The lot owner may appeal the  
4 decision of an adjudicatory panel to the full executive board by delivering written notice of appeal  
5 to the executive board within 15 days after the date of the decision. The executive board may  
6 affirm, vacate, or modify the prior decision of the adjudicatory body.

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

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

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

17 (2) If neither party requests mediation or arbitration within the 10-day period  
18 described in subsection (b) of this section or if mediation or arbitration do not  
19 result in a settlement of the claim, the claimant may begin legal proceedings.

20 (3) The settlement of the claim must be documented in a written agreement signed  
21 by each party.

22 (4) If a party fails to abide by the settlement agreement, the other party may begin  
23 legal proceedings.

24 (5) If a party who begins legal proceedings prevails, the party is entitled to recover  
25 from the other party court costs, attorneys' fees, and all other reasonable costs  
26 incurred in enforcing the settlement agreement."

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

28 **"§ 47F-3-116. Lien for sums due the association; enforcement.**

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

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

51 ...."

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