

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 806*
Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Notice on Liens for HOA Assessments.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"§ 47F-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.



* H B 0 6 - V - 3 *

1 (d) This section does not prohibit other actions to recover the sums for which
2 subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of
3 foreclosure.

4 (e) A judgment, decree, or order in any action brought under this section shall include
5 costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest
6 the collection of debt and enforcement of a lien after the expiration of the 15-day period
7 following notice as required in subsection (e1) of this section, then reasonable attorneys' fees
8 shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses
9 incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot
10 owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to
11 the amount or validity of the debt and lien asserted or the association's right to collect the debt
12 and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection
13 shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this
14 section or G.S. 47F-3-120.

15 (e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot
16 owner is notified in writing of the association's intent to seek payment of attorneys' fees and
17 court costs. The notice must be sent by first-class mail to the property address and, if different,
18 to the mailing address for the lot owner in the association's records. The association must make
19 reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing
20 address. The notice shall set out the outstanding balance due as of the date of the notice and
21 state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the
22 outstanding balance without the attorneys' fees and court costs. If the lot owner pays the
23 outstanding balance within this period, then the lot owner shall have no obligation to pay
24 attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to
25 contact a representative of the association to discuss a payment schedule for the outstanding
26 balance as provided in subsection (e2) of this section and shall provide the name and telephone
27 number of the representative.

28 (e2) The association, acting through its executive board and in the board's sole
29 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
30 association nor the lot owner is obligated to offer or accept any proposed installment schedule.
31 Reasonable administrative fees and costs for accepting and processing installments may be
32 added to the outstanding balance and included in an installment payment schedule. Reasonable
33 attorneys' fees may be added to the outstanding balance and included in an installment schedule
34 only after the lot owner has been given notice as required in subsection (e1) of this section.

35 (f) Where the holder of a first mortgage or first deed of trust of record, or other
36 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first
37 deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the
38 assessments against such lot which became due prior to the acquisition of title to such lot by
39 such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible
40 from all the lot owners including such purchaser, its heirs, successors, and assigns.

41 (g) A claim of lien shall set forth the name and address of the association, the name of
42 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
43 amount of the lien claimed. The first page of the claim of lien shall contain the following
44 statement in print that is in boldface, capital letters, and no smaller than the largest print used
45 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST
46 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS
47 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR
48 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA
49 LAW.' The claim of lien must be sent by first-class mail to the property address, and if
50 different, to the mailing address of the lot owner. The association must make reasonable and
51 diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The

1 person signing the claim of lien on behalf of the association shall attach to and file with the
2 claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner
3 received actual notice."

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

5 **"§ 47C-3-116. Lien for assessments.**

6 (a) Any assessment levied against a unit remaining unpaid for a period of 30 days or
7 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
8 the clerk of superior court of the county in which the unit is located in the manner provided
9 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
10 to ensure that its records contain the lot owner's current mailing address. Unless the declaration
11 otherwise provides, fees, charges, late charges and other charges imposed pursuant to
12 G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under
13 this section. Except as provided in subsections (a1) and (a2) of this section, the association's
14 lien may be foreclosed in like manner as a mortgage on real estate under power of sale under
15 Article 2A of Chapter 45 of the General Statutes.

16 (a1) An association may not foreclose an association assessment lien under Article 2A of
17 Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed
18 by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely
19 associated with fines imposed by the association. The association, however, may enforce the
20 lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

21 (a2) An association shall not levy, charge, or attempt to collect a service, collection,
22 consulting, or administration fee from any unit owner unless the fee is expressly allowed in the
23 declaration. Any lien secured by debt consisting solely of these fees may only be enforced by
24 judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

25 (b) The lien under this section is prior to all other liens and encumbrances on a unit
26 except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or
27 deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of
28 superior court, and (ii) liens for real estate taxes and other governmental assessments or charges
29 against the unit. This subsection does not affect the priority of mechanics' or materialmen's
30 liens.

31 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
32 are instituted within three years after the docketing thereof in the office of the clerk of superior
33 court.

34 (d) This section does not prohibit actions to recover sums for which subsection (a)
35 creates a lien or prohibit an association taking a deed in lieu of foreclosure.

36 (e) A judgment, decree, or order in any action brought under this section shall include
37 costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest
38 the collection of debt and enforcement of a lien after the expiration of the 15-day period
39 following notice as required in subsection (e1) of this section, then reasonable attorneys' fees
40 shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses
41 incurred. The collection of debt and enforcement of a lien remain uncontested as long as the
42 unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as
43 to the amount or validity of the debt and lien asserted or the association's right to collect the
44 debt and enforce the lien as provided in this section. The attorneys' fee limitation in this
45 subsection shall not apply to judicial foreclosures or proceedings authorized under subsection
46 (d) of this section or G.S. 47C-4-117.

47 (e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit
48 owner is notified in writing of the association's intent to seek payment of attorneys' fees and
49 court costs. The notice must be sent by first-class mail to the property address and, if different,
50 to the mailing address for the unit owner in the association's records. The association must
51 make reasonable and diligent efforts to ensure that its records contain the lot owner's current

1 mailing address. The notice shall set out the outstanding balance due as of the date of the notice
2 and state that the unit owner has 15 days from the mailing of the notice by first-class mail to
3 pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays
4 the outstanding balance within this period, then the unit owner shall have no obligation to pay
5 attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to
6 contact a representative of the association to discuss a payment schedule for the outstanding
7 balance as provided in subsection (e2) of this section and shall provide the name and telephone
8 number of the representative.

9 (e2) The association, acting through its executive board and in the board's sole
10 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
11 association nor the unit owner is obligated to offer or accept any proposed installment schedule.
12 Reasonable administrative fees and costs for accepting and processing installments may be
13 added to the outstanding balance and included in an installment payment schedule. Reasonable
14 attorneys' fees may be added to the outstanding balance and included in an installment schedule
15 only after the unit owner has been given notice as required in subsection (e1) of this section.

16 (f) Where the holder of a first mortgage or first deed of trust of record, or other
17 purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first
18 deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the
19 assessments against such unit which became due prior to acquisition of title to such unit by
20 such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible
21 from all the unit owners including such purchaser, and its heirs, successors and assigns.

22 (g) A claim of lien shall set forth the name and address of the association, the name of
23 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
24 amount of the lien claimed. The first page of the claim of lien shall contain the following
25 statement in print that is in boldface, capital letters, and no smaller than the largest print used
26 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST
27 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS
28 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR
29 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA
30 LAW.' The claim of lien must be sent by first-class mail to the property address, and if
31 different, to the mailing address of the lot owner. The association must make reasonable and
32 diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The
33 person signing the claim of lien on behalf of the association shall attach to and file with the
34 claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner
35 received actual notice."

36 **SECTION 3.** This act becomes effective October 1, 2009, and applies to claims of
37 lien filed on or after that date.