§ 47C-2-117.1. Judicial reformation of declaration.

(a) A unit owners' association may bring a civil action in superior court in the county where the condominium or the greater part thereof is located to reform the condominium instruments to resolve ambiguities, errors, or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners. The condominium instruments may also be reformed to correct scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

The superior court shall have jurisdiction over matters set forth in G.S. 47C-2-117(f) regarding ownership of marketable title of the common elements or units and may, upon consideration of pleadings and such other matters as the court may in its exercise of equity allow, order (i) reformation, in whole or in part, of any provision of the condominium instruments and (ii) correction of mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose set forth in G.S. 47C-2-117.1(f).

(b) A complaint filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that all of the following requirements have been met:

(1) The unit owners' association has made at least three good-faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in the complaint, and where the attempts to convene a duly called meeting have been unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

(2) Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant has joined in the complaint of the unit owners' association.

(3) A copy of the complaint has been served in accordance with Rule 4(j), 4(j1), or Rule 4(j5) of the North Carolina Rules of Civil Procedure on all unit owners and all beneficiaries of a deed of trust or mortgagees of record for a unit in the condominium.

(4) The complaint notifies the recipient that if the recipient does not timely respond to the complaint pursuant to Article 3 of the North Carolina Rules of Civil Procedure, then the relief sought may be granted by the clerk of superior court.

(5) No written response objecting to or disputing the petition is received within 45 days from the date the last person to be served was served with the complaint as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

(c) If the response of any person served with the complaint objects to or disputes the complaint, the action shall be transferred to the civil docket of the superior court for further proceedings.

(d) Any unit owner or beneficiary of a deed of trust or mortgagee of a condominium unit in the condominium objecting to or disputing the complaint shall have standing to participate in the reformation action. No reformation pursuant to this section shall affect the rights, priority of the lien, or otherwise materially impair or affect any condominium unit as collateral for a deed of trust or mortgage, or affect a beneficiary of a deed of trust or mortgagee's right to foreclose on a condominium unit as collateral without the duly acknowledged written consent of the beneficiary of the deed of trust or mortgagee.

(e) Nothing contained in this section shall prevent or preclude any unit owner or owners, at any time, from filing an action in superior court for judicial reformation related to the title, formation, or construction of the condominium declaration, plat or plans, to establish marketable title to the owner's or owners' unit or units.

(f) In any action brought under this section, the person prosecuting the reformation action must file a notice of pending litigation complying with Article 11 of Chapter 1 of the General Statutes.

(g) The period prescribed for the commencement of a collateral action contesting a judgment ordering reformation or correction under this section shall be one year from the date of entry of the judgment. This subsection does not apply to an action for damages sustained by any party as a result of the reformation or correction. (2020-52, s. 3(b).)