

LEGISLATIVE RESEARCH COMMISSION

**COMMITTEE ON DISPUTE RESOLUTION  
OPTIONS FOR HOMEOWNERS,  
ASSOCIATIONS AND GOVERNING  
ENTITIES**

**NORTH CAROLINA GENERAL ASSEMBLY**



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

**APRIL 11, 2018**

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## TABLE OF CONTENTS

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LETTER OF TRANSMITTAL .....	7
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP .....	9
PREFACE.....	10
COMMITTEE PROCEEDINGS .....	11
FINDING AND RECOMMENDATIONS.....	12
APPENDICES	
<u>APPENDIX A</u>	
MEMBERSHIP OF THE LRC COMMITTEE ON DISPUTE RESOLUTION OPTIONS FOR HOMEOWNERS, ASSOCIATIONS AND GOVERNING ENTITIES .....	13
<u>APPENDIX B</u>	
COMMITTEE CHARGE .....	14
<u>APPENDIX C</u>	
STATUTORY AUTHORITY .....	15
<u>APPENDIX D</u>	
LEGISLATIVE PROPOSALS .....	16
<u>APPENDIX E</u>	
SUPPORTING DOCUMENTS.....	18

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# TRANSMITTAL LETTER

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May 16, 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, 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

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2017 – 2018

Senator Bill Rabon  
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 John Bradford  
Representative William Brawley  
Representative Becky Carney  
Representative Jonathan Jordan





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## PREFACE

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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, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Dan Bishop and Representative 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.



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## COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Dispute Resolution Options for Homeowners, Associations and Governing Entities 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, Representative Stevens turned the Chair over to Senator Bishop and moved to amend the draft report to recommend directing the Program Evaluation Division to study the issues as set forth in Legislative Proposal #1. The Committee approved this amendment to the draft report, and then voted to adopt the draft report, as amended.



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## FINDINGS AND RECOMMENDATIONS

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

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; and
4. What role the State should have in establishing a framework for managing disputes.

Therefore, the Committee recommends the enactment of Legislative Proposal #1.



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## COMMITTEE MEMBERSHIP

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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





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## COMMITTEE CHARGE

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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.



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## STATUTORY AUTHORITY

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### 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.



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## LEGISLATIVE PROPOSALS

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**LEGISLATIVE PROPOSAL #1**

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

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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**

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

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Sponsors: Representative Stevens.

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Referred to:

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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.  
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## SUPPORTING DOCUMENTS

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



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.

(WB163)

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.

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## 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](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](mailto:office@cai-nc.org).



Attorneys at Law

Carole R. Albright  
Steven E. Black  
T. Keith Black  
Emily J. Meister  
James H. Slaughter  
Theodora A. Vaporis

Ashley D. Bennington  
Elizabeth W. Holloway  
R. Bradley Jones  
Adam J. Marshall  
Barbara R. Morgenstern  
Jason B. Pruett  
Jonathan S. Raymer  
Christopher R. Rivers  
Jennifer L. Ruby  
Michael C. Talliercio  
Harmony W. Taylor  
David C. Wilson

**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

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Black, Slaughter & Black, PA

3623 North Elm Street | Suite 200 | Greensboro, NC 27455 | PO Box 41027 | Greensboro, NC 27404 | 336.378.1899

1927 South Tryon Street | Suite 100 | Charlotte, NC 28203 | 704.970.1593

lawfirmcarolinas.com

Chapter of the Community Associations Institute<sup>1</sup> 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.

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<sup>1</sup> 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.



# 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](http://bit.ly/MEDIATE_NC).**

*CAI-NC member attorneys or PCAM designated managers interested in serving as a mediator, contact [office@cai-nc.org](mailto:office@cai-nc.org).*

  
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# **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.*

