

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 958

Short Title: Homeowner/Condo. Assoc. Liens.

(Public)

Sponsors: Representatives B. Miller (by request); and Hensley.

Referred to: Judiciary III.

April 15, 1993

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR HOMEOWNER AND CONDOMINIUM
ASSOCIATION LIENS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 44A of the General Statutes is amended by adding a new
Article to read:

ARTICLE 5.

HOMEOWNER AND CONDOMINIUM ASSOCIATION LIENS.

§ 44A-50. Definition.

As used in this Article, 'declaration' means any instruments, however denominated, that create an interest in real estate with respect to which a person, by virtue of his ownership of a lot or unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration, including any amendments to those instruments.

§ 44A-51. Homeowner and condominium association liens.

(a) A nonprofit homeowners' or condominium owners' association shall have a lien on a lot or unit for any assessment levied against that lot or unit, or fines imposed against the owner of the lot or unit, from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section takes priority over all other liens and encumbrances on a lot or unit except:

- 1 (1) Liens and encumbrances recorded before the recordation of the
2 declaration;
3 (2) A first security interest on the lot or unit recorded before the date on
4 which the assessment sought to be enforced became delinquent; and
5 (3) Liens for real estate taxes and other governmental assessments or
6 charges against the lot or unit.

7 The lien also takes priority over all security interests described in subdivision (1)
8 of this subsection to the extent of the common expense assessments based on
9 the periodic budget adopted by the association which would have become due in the
10 absence of acceleration during the nine months immediately preceding the institution of
11 an action to enforce the lien. This subsection does not affect the priority of mechanics'
12 or materialmen's liens, or the priority of liens for other assessments made by the
13 association.

14 (c) Unless the declaration otherwise provides, if two or more associations have
15 liens for assessments created at any time on the same property, those liens have equal
16 priority.

17 (d) Recording of the declaration constitutes record notice and perfection of the
18 lien. No further recordation of any claim of lien for assessment under this section is
19 required.

20 (e) A lien for unpaid assessments is extinguished unless proceedings to enforce
21 the lien are instituted within three years after the full amount of the assessments become
22 due.

23 (f) This section does not prohibit actions to recover sums for which subsection
24 (a) of this section creates a lien and does not prohibit an association from taking a deed
25 in lieu of foreclosure.

26 (g) The association, upon written request, shall furnish to a lot or unit owner a
27 statement setting forth the amount of unpaid assessments against the unit. If the lot or
28 unit owner's interest is real estate, the statement must be in recordable form. The
29 statement must be furnished within 10 business days after receipt of the request, and is
30 binding on the association, the executive board, and every lot or unit owner."

31 Sec. 2. G.S. 47C-3-116 reads as rewritten:

32 "**§ 47C-3-116. Lien for assessments.**

33 (a) Any assessment levied against a unit remaining unpaid for a period of 30
34 days or longer shall constitute a lien on that unit when filed of record in the office of the
35 clerk of superior court of the county in which the unit is located in the manner provided
36 therefor by Article 8 of Chapter 44 of the General Statutes. The association's lien may
37 be foreclosed in like manner as a mortgage on real estate under power of sale under
38 Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise
39 provides, fees, charges, late charges, fines, and interest charged pursuant to G.S. 47C-3-
40 102(10), (11), and (12), G.S. 47C-3-107(d), and 47C-3-107A, are enforceable as
41 assessments under this section.

42 ~~(b) The lien under this section is prior to all other liens and encumbrances on a~~
43 ~~unit except (i) liens and encumbrances (specifically including, but not limited to, a~~
44 ~~mortgage or deed of trust on the unit) recorded before the docketing of the lien in the~~

1 ~~office of the clerk of superior court, and (ii) liens for real estate taxes and other~~
2 ~~governmental assessments or charges against the unit. This subsection does not affect~~
3 ~~the priority of mechanics' or materialmen's liens.~~

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

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

9 (e) A judgment, decree or order in any action brought under this section must
10 include costs and reasonable attorney's fees for the prevailing party.

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

18 Sec. 3. This act becomes effective January 1, 1994, and applies to
19 assessments levied or fines imposed on or after that date.