

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2009**

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**HOUSE BILL 806\***

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Short Title: Notice on Liens for HOA Assessments. (Public)

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Sponsors: Representatives Weiss, Earle, Glazier, Cotham (Primary Sponsors); and Lucas.

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Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

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March 26, 2009

1                   **A BILL TO BE ENTITLED**

2    AN ACT TO REQUIRE THAT NOTICE OF A CLAIM OF LIEN FOR ASSESSMENTS  
3    FILED BY A HOMEOWNERS ASSOCIATION BE SERVED ON THE LOT OWNER IN  
4    THE SAME MANNER AS SERVICE OF A SUMMONS IN A CIVIL ACTION.

5   The General Assembly of North Carolina enacts:

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

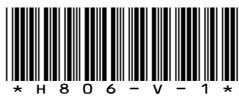
7                   **"§ 47F-3-116. Lien for assessments.**

8         (a) Any assessment levied against a lot remaining unpaid for a period of 30 days or  
9    longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of  
10   the clerk of superior court of the county in which the lot is located in the manner provided  
11   herein. Notice of the claim of lien shall be served on the lot owner in any manner provided by  
12   Rule 4 of the Rules of Civil Procedure for service of summons, including service by personal  
13   delivery, or by registered mail or certified mail, return receipt requested. Unless the declaration  
14   otherwise provides, fees, charges, late charges, and other charges imposed pursuant to  
15   G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under  
16   this section. Except as provided in subsections (a1) and (a2) of this section, the association may  
17   foreclose the claim of lien in like manner as a mortgage on real estate under power of sale  
18   under Article 2A of Chapter 45 of the General Statutes. Prior to initiating a foreclosure  
19   proceeding under this subsection, the association must produce an affidavit of service of the  
20   claim of lien, and if service was made by publication in accordance with Rule 4(j1) of the Rules  
21   of Civil Procedure, the affidavit must set forth the specific facts and circumstances explaining  
22   why the lot owner cannot with due diligence be served by personal delivery, registered or  
23   certified mail. The affidavit shall be filed with the foreclosure notice of hearing.

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

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

33         (b) The lien under this section is prior to all liens and encumbrances on a lot except (i)  
34   liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust  
35   on the lot) recorded before the docketing of the claim of lien in the office of the clerk of  
36   superior court, and (ii) liens for real estate taxes and other governmental assessments and



1 charges against the lot. This subsection does not affect the priority of mechanics' or  
2 materialmen's liens.

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

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

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

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

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

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

46 (g) A claim of lien shall set forth the name and address of the association, the name of  
47 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the  
48 amount of the lien claimed."

49 **SECTION 2.** This act becomes effective October 1, 2009, and applies to claims of  
50 lien filed on or after that date.