

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 165
Committee Substitute Favorable 5/31/11
Third Edition Engrossed 6/1/11

Short Title: Planned Community & Condo Act Amends.

(Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANNED COMMUNITY ACT AND THE CONDOMINIUM ACT CONCERNING THE TIME PERIOD FOR FORECLOSURE OF A CLAIM OF LIEN FOR UNPAID ASSESSMENTS, TO AMEND THE LAW CONCERNING DISCLOSURE OF INFORMATION ABOUT HOMEOWNERS ASSOCIATIONS TO POTENTIAL PURCHASERS, AND TO REQUIRE THE REAL ESTATE COMMISSION TO PREPARE AND MAKE AVAILABLE INFORMATION ABOUT RESTRICTIVE COVENANTS TO POTENTIAL PURCHASERS.

The General Assembly of North Carolina enacts:

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

"(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. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. 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~~ association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under of power of sale or under Article 2A of Chapter 45 of the General Statutes. Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot."

SECTION 2. G.S. 47C-3-116(a) reads as rewritten:

"(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit 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 unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due



1 by first-class mail to the physical address of the unit and the unit owner's address of record with
2 the association, and, if different, to the address for the unit owner shown on the county tax
3 records and the county real property records for the unit. If the unit owner is a corporation, the
4 statement shall also be sent by first-class mail to the mailing address of the registered agent for
5 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other
6 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are
7 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)
8 of this section, the ~~association~~ association, acting through the executive board, may foreclose
9 the claim of lien in like manner as a mortgage on real estate under power of sale or under
10 Article 2A of Chapter 45 of the General ~~Statutes.~~ Statutes, if the assessment remains unpaid for
11 90 days or more. The association shall not foreclose the claim of lien unless the executive
12 board votes to commence the proceeding against the specific unit."

13 **SECTION 3.(a)** G.S. 47E-2 reads as rewritten:

14 "**§ 47E-2. Exemptions.**

15 The following transfers are exempt from the provisions of this Chapter:

16 ...

- 17 (11) Transfers between parties when both parties agree not to complete a
18 residential property disclosure ~~statement.~~ statement or an owners' association
19 and mandatory covenants disclosure statement."

20 **SECTION 3.(b)** G.S. 47E-4 reads as rewritten:

21 "**§ 47E-4. Required disclosures.**

22 (a) With regard to transfers described in G.S. 47E-1, the owner of the real property
23 shall furnish to a purchaser a residential property disclosure statement. The disclosure
24 statement shall:

- 25 (1) Disclose those items which are required to be disclosed relative to the
26 characteristics and condition of the property and of which the owner has
27 actual knowledge; or
28 (2) State that the owner makes no representations as to the characteristics and
29 condition of the real property or any improvements to the real property
30 except as otherwise provided in the real estate contract.

31 (b) The North Carolina Real Estate Commission shall develop and require the use of a
32 standard disclosure statement to comply with the requirements of this section. The disclosure
33 statement shall specify that certain transfers of residential property are excluded from this
34 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease
35 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and
36 shall include at least the following characteristics and conditions of the property:

- 37 (1) The water supply and sanitary sewage disposal system;
38 (2) The roof, chimneys, floors, foundation, basement, and other structural
39 components and any modifications of these structural components;
40 (3) The plumbing, electrical, heating, cooling, and other mechanical systems;
41 (4) Present infestation of wood-destroying insects or organisms or past
42 infestation the damage for which has not been repaired;
43 (5) The zoning laws, restrictive covenants, building codes, and other land-use
44 restrictions affecting the real property, any encroachment of the real property
45 from or to adjacent real property, and notice from any governmental agency
46 affecting this real property; and
47 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
48 storage tank, hazardous material or toxic material (whether buried or
49 covered), and other environmental contamination.

1 The disclosure statement shall provide the owner with the option to indicate whether the
2 owner has actual knowledge of the specified characteristics or conditions, or the owner is
3 making no representations as to any characteristic or condition.

4 (b1) With regard to transfers described in G.S. 47E-1, the owner of the real property
5 shall furnish to a purchaser an owners' association and mandatory covenants disclosure
6 statement.

7 (1) The North Carolina Real Estate Commission shall develop and require the
8 use of a standard disclosure statement to comply with the requirements of
9 this subsection. The disclosure statement shall specify that certain transfers
10 of residential property are excluded from this requirement by G.S. 47E-2,
11 including transfers of residential property made pursuant to a lease with an
12 option to purchase where the lessee occupies or intends to occupy the
13 dwelling. The standard disclosure statement shall require disclosure of
14 whether or not the property to be conveyed is subject to regulation by one or
15 more owners' association(s) and governing documents which impose various
16 mandatory covenants, conditions, and restrictions upon the property,
17 including, but not limited to, obligations to pay regular assessments or dues
18 and special assessments. The statement required by this subsection shall
19 include information on all of the following:

- 20 a. The name, address, telephone number, or e-mail address for the
21 president or manager of the association to which the lot is subject.
22 b. The amount of any regular assessments or dues to which the lot is
23 subject.
24 c. Whether there are any services that are paid for by regular
25 assessments or dues to which the lot is subject.
26 d. Whether, as of the date the disclosure is signed, there are any
27 assessments, dues, fees, or special assessments which have been duly
28 approved as required by the applicable declaration or bylaws,
29 payable to an association to which the lot is subject.
30 e. Whether, as of the date the disclosure is signed, there are any
31 unsatisfied judgments against or pending lawsuits involving the lot,
32 the planned community or the association to which the lot is subject,
33 with the exception of any action filed by the association for the
34 collection of delinquent assessments on lots other than the lot to be
35 sold.
36 f. Any fees charged by an association or management company to
37 which the lot is subject in connection with the conveyance or transfer
38 of the lot to a new owner.

39 (2) The owners' association and mandatory covenants disclosure statement shall
40 provide the owner with the option to indicate whether the owner has actual
41 knowledge of the specified characteristics, or conditions or the owner is
42 making no representations as to any characteristic or condition contained in
43 the statement.

44 (c) The rights of the parties to a real estate contract as to conditions of the property of
45 which the owner had no actual knowledge are not affected by this Article unless the residential
46 disclosure statement or the owners' association and mandatory covenants disclosure statement,
47 as applicable, states that the owner makes no representations as to those conditions. If the
48 statement states that an owner makes no representations as to the conditions of the property,
49 then the owner has no duty to disclose those conditions, whether or not the owner should have
50 known of them."

51 **SECTION 3.(c)** G.S. 47E-5 reads as rewritten:

1 **"§ 47E-5. Time for disclosure; cancellation of contract.**

2 (a) The owner of real property subject to this Chapter shall deliver to the purchaser the
3 disclosure ~~statement~~statements required by this Chapter no later than the time the purchaser
4 makes an offer to purchase, exchange, or option the property, or exercises the option to
5 purchase the property pursuant to a lease with an option to purchase. The residential property
6 disclosure statement or the owners' association and mandatory covenants disclosure statement
7 may be included in the real estate contract, in an addendum, or in a separate document.

8 (b) If the disclosure ~~statement~~statements required by this Chapter ~~is~~are not delivered to
9 the purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any
10 resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior
11 to the following, whichever occurs first:

- 12 (1) The end of the third calendar day following the purchaser's receipt of the
13 disclosure statement;
- 14 (2) The end of the third calendar day following the date the contract was made;
- 15 (3) Settlement or occupancy by the purchaser in the case of a sale or exchange;
16 or
- 17 (4) Settlement in the case of a purchase pursuant to a lease with option to
18 purchase.

19 Any right of the purchaser to cancel the contract provided by this subsection is waived
20 conclusively if not exercised in the manner required by this subsection.

21 In order to cancel a real estate contract when permitted by this section, the purchaser shall,
22 within the time required above, give written notice to the owner or the owner's agent either by
23 hand delivery or by depositing into the United States mail, postage prepaid, and properly
24 addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in
25 compliance with this subsection, the cancellation shall be without penalty to the purchaser, and
26 the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any
27 rights of the purchaser to cancel or terminate the contract for reasons other than those set forth
28 in this subsection are not affected by this subsection."

29 **SECTION 3.(d)** G.S. 47E-6 reads as rewritten:

30 **"§ 47E-6. Owner liability for disclosure of information provided by others.**

31 The owner may discharge the duty to disclose imposed by this Chapter by providing a
32 written report attached to the residential property disclosure statement and the owners'
33 association and mandatory covenants disclosure statement by a public agency or by an attorney,
34 engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other
35 expert, dealing with matters within the scope of the public agency's functions or the expert's
36 license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any
37 information delivered pursuant to this section if the error, inaccuracy, or omission was made in
38 reasonable reliance upon the information provided by the public agency or expert and the
39 owner was not grossly negligent in obtaining the information or transmitting it."

40 **SECTION 3.(e)** G.S. 47E-7 reads as rewritten:

41 **"§ 47E-7. Change in circumstances.**

42 If, subsequent to the owner's delivery of a residential property disclosure statement and the
43 owners' association and mandatory covenants disclosure statement to a purchaser, the owner
44 discovers a material inaccuracy in the~~a~~ disclosure statement,~~statement,~~ or the~~a~~ disclosure
45 statement is rendered inaccurate in a material way by the occurrence of some event or
46 circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected
47 disclosure statement or statements to the purchaser. Failure to deliver ~~the~~a corrected disclosure
48 statement or to make the repairs made necessary by the event or circumstance shall result in
49 such remedies for the buyer as are provided for by law in the event the sale agreement requires
50 the property to be in substantially the same condition at closing as on the date of the offer to
51 purchase, reasonable wear and tear excepted."

1 **SECTION 3.(f)** G.S. 47E-8 reads as rewritten:

2 "**§ 47E-8. Agent's duty.**

3 A real estate broker or salesman acting as an agent in a residential real estate transaction has
4 the duty to inform each of the clients of the real estate broker or salesman of the client's rights
5 and obligations under this Chapter. Provided the owner's real estate broker or salesman has
6 performed this duty, the broker or salesman shall not be responsible for the owner's willful
7 refusal to provide a prospective purchaser with a residential property disclosure
8 ~~statement.~~statement or an owners' association and mandatory covenants disclosure statement.
9 Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's
10 duties under Chapter 93A of the General Statutes."

11 **SECTION 3.(g)** This section becomes effective January 1, 2012, and applies to
12 real estate transfers or dispositions occurring on or after that date. The North Carolina Real
13 Estate Commission shall develop and make available the standard disclosure form required by
14 G.S. 47E-4(b1), as enacted by Section 3(b) of this act, by December 1, 2011.

15 **SECTION 4.** The North Carolina Real Estate Commission shall develop and make
16 available for homebuyers a brochure about restrictive covenants. The brochure shall include an
17 explanation that unpaid assessments, fines, fees, or charges may result in foreclosure of the
18 owner's property. The brochure shall be available by December 1, 2011.

19 **SECTION 5.** This act is effective when it becomes law and applies to foreclosure
20 actions filed on or after October 1, 2011.