

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 175

Short Title: HOAs/No Home Foreclosures. (Public)

Sponsors: Representatives R. Moore, Alexander, and Hamilton (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee A, if favorable, Regulatory Reform, if favorable,
Finance.

February 28, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT HOMEOWNER ASSOCIATIONS MAY NOT FORECLOSE
ON ASSOCIATION ASSESSMENT LIENS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-116 reads as rewritten:

"§ 47C-3-116. Lien for assessments.

(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 by first-class mail to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit 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. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. ~~Except as provided in subsections (a1) and (a2) of this section, the association, acting through the executive board, may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale or under Article 2A of Chapter 45 of the General 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 unit.~~

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

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



1 (b) The lien under this section is prior to all other liens and encumbrances on a unit
2 except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or
3 deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of
4 superior court, and (ii) liens for real estate taxes and other governmental assessments or charges
5 against the unit. This subsection does not affect the priority of mechanics' or materialmen's
6 liens.

7 (c) A lien for unpaid assessments is extinguished unless proceedings to ~~enforce collect~~
8 the amount of the lien are instituted within three years after the docketing thereof in the office
9 of the clerk of superior court.

10 (d) ~~This~~ An association may not foreclose an association assessment lien. However, this
11 section does not prohibit actions to recover sums for which subsection (a) creates a lien or
12 prohibit an association taking a deed in lieu of foreclosure lien. A judgment, decree, or order in
13 an action brought under this subsection shall include costs and reasonable attorneys' fees for the
14 prevailing party.

15 ~~(e) A judgment, decree, or order in any action brought under this section shall include~~
16 ~~costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest~~
17 ~~the collection of debt and enforcement of a lien after the expiration of the 15-day period~~
18 ~~following notice as required in subsection (e1) of this section, then reasonable attorneys' fees~~
19 ~~shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses~~
20 ~~incurred. The collection of debt and enforcement of a lien remain uncontested as long as the~~
21 ~~unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as~~
22 ~~to the amount or validity of the debt and lien asserted or the association's right to collect the~~
23 ~~debt and enforce the lien as provided in this section. The attorneys' fee limitation in this~~
24 ~~subsection shall not apply to judicial foreclosures or proceedings authorized under subsection~~
25 ~~(d) of this section or G.S. 47C-4-117.~~

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

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

46 (f) Where the holder of a first mortgage or first deed of trust of record, or other
47 purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first
48 deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the
49 assessments against such unit which became due prior to acquisition of title to such unit by
50 such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible
51 from all the unit owners including such purchaser, and its heirs, successors and assigns.

1 (g) A claim of lien shall set forth the name and address of the association, the name of
2 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
3 amount of the lien claimed. The first page of the claim of lien shall contain the following
4 statement in print that is in boldface, capital letters and no smaller than the largest print used
5 elsewhere in the document: "THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR
6 PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION
7 ~~MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE~~
8 ~~MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."~~COMMENCE A
9 CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO COLLECT THE
10 AMOUNT OF THE LIEN." The person signing the claim of lien on behalf of the association
11 shall attach to and file with the claim of lien a certificate of service attesting to the attempt of
12 service on the record owner, which service shall be attempted in accordance with G.S. 1A-1,
13 Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not
14 achieved, the person signing the claim of lien on behalf of the association shall be deemed to
15 have met the requirements of this subsection if service has been attempted pursuant to both of
16 the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by
17 regular, first-class mail, postage prepaid to the physical address of the unit and the unit owner's
18 address of record with the association, and, if different, to the address for the unit owner shown
19 on the county tax records and the county real property records for the unit. In the event that the
20 owner of record is not a natural person, and actual service is not achieved, the person signing
21 the claim of lien on behalf of the association shall be deemed to have met the requirements of
22 this subsection if service has been attempted once pursuant to the applicable provisions of
23 G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

24 **SECTION 2.** G.S. 47F-3-116 reads as rewritten:

25 **"§ 47F-3-116. Lien for assessments.**

26 (a) Any assessment levied against a lot remaining unpaid for a period of 30 days or
27 longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of
28 the clerk of superior court of the county in which the lot is located in the manner provided
29 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
30 to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days
31 prior to filing the lien, the association shall mail a statement of the assessment amount due by
32 first-class mail to the physical address of the lot and the lot owner's address of record with the
33 association, and, if different, to the address for the lot owner shown on the county tax records
34 and the county real property records for the lot. If the lot owner is a corporation, the statement
35 shall also be sent by first-class mail to the mailing address of the registered agent for the
36 corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other
37 charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are
38 enforceable as assessments under this section. ~~Except as provided in subsections (a1) and (a2)~~
39 ~~of this section, the association, acting through the executive board, may foreclose the claim of~~
40 ~~lien in like manner as a mortgage on real estate under power of sale or under Article 2A of~~
41 ~~Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The~~
42 ~~association shall not foreclose the claim of lien unless the executive board votes to commence~~
43 ~~the proceeding against the specific lot.~~

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

49 (a2) An association shall not levy, charge, or attempt to collect a service, collection,
50 consulting, or administration fee from any lot owner unless the fee is expressly allowed in the

1 declaration. ~~Any lien securing a debt consisting solely of these fees may only be enforced by~~
2 ~~judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.~~

3 (b) The lien under this section is prior to all liens and encumbrances on a lot except (i)
4 liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust
5 on the lot) recorded before the docketing of the claim of lien in the office of the clerk of
6 superior court, and (ii) liens for real estate taxes and other governmental assessments and
7 charges against the lot. This subsection does not affect the priority of mechanics' or
8 materialmen's liens.

9 (c) A lien for unpaid assessments is extinguished unless proceedings to ~~enforce collect~~
10 ~~the amount of the lien~~ are instituted within three years after the docketing of the claim of lien in
11 the office of the clerk of superior court.

12 (d) ~~This An association may not foreclose an association assessment lien. However, this~~
13 ~~section does not prohibit other actions to recover the sums for which subsection (a) of this~~
14 ~~section creates a lien or prohibit an association taking a deed in lieu of foreclosure lien. A~~
15 ~~judgment, decree, or order in an action brought under this subsection shall include costs and~~
16 ~~reasonable attorneys' fees for the prevailing party.~~

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

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

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

48 (f) Where the holder of a first mortgage or first deed of trust of record, or other
49 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first
50 deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the
51 assessments against such lot which became due prior to the acquisition of title to such lot by

1 such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible
2 from all the lot owners including such purchaser, its heirs, successors, and assigns.

3 (g) A claim of lien shall set forth the name and address of the association, the name of
4 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
5 amount of the lien claimed. The first page of the claim of lien shall contain the following
6 statement in print that is in boldface, capital letters and no smaller than the largest print used
7 elsewhere in the document: "~~THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR~~
8 ~~PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION~~
9 ~~MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE~~
10 ~~MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW~~".COMMENCE A
11 CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO COLLECT THE
12 AMOUNT OF THE LIEN." The person signing the claim of lien on behalf of the association
13 shall attach to and file with the claim of lien a certificate of service attesting to the attempt of
14 service on the record owner, which service shall be attempted in accordance with G.S. 1A-1,
15 Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not
16 achieved, the person signing the claim of lien on behalf of the association shall be deemed to
17 have met the requirements of this subsection if service has been attempted pursuant to both of
18 the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by
19 regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's
20 address of record with the association, and, if different, to the address for the lot owner shown
21 on the county tax records and the county real property records for the lot. In the event that the
22 owner of record is not a natural person, and actual service is not achieved, the person signing
23 the claim of lien on behalf of the association shall be deemed to have met the requirements of
24 this subsection if service has been attempted once pursuant to the applicable provisions of
25 G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

26 **SECTION 3.** This act becomes effective October 1, 2013, and applies to all
27 association assessment liens filed on or after that date.