

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 278
Mar 12, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH30151-LMf-11A (01/15)

Short Title: HOAs/Voluntary Prelitigation Mediation. (Public)

Sponsors: Representatives D. Ross and D. Hall (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS
3 RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS
4 ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE
5 PRIOR TO FILING A CIVIL ACTION.

6 Whereas, homeowners associations in condominium and planned communities
7 serve a vital role in our State by maintaining common areas, providing recreational facilities
8 and neighborhood meeting places, and adopting rules and regulations to help preserve property
9 values; and

10 Whereas, often disputes arise between homeowners associations and their members,
11 which either do not constitute the basis for a legal cause of action or result in costly litigation;
12 and

13 Whereas, the State has an interest in encouraging homeowners associations and their
14 members to voluntarily mediate disputes in a manner that will allow both sides to be heard and
15 to reach a mutually satisfactory agreement; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** Article 5 of Chapter 7A of the General Statutes is amended by adding
18 a new section to read as follows:

19 **"§ 7A-38.3F. Prelitigation mediation of homeowners association disputes.**

20 (a) Definitions. – The following definitions apply in this section:

- 21 (1) Association. – An association of unit or lot owners organized as allowed
22 under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.
23 (2) Community mediation center. – A community mediation center established
24 under G.S. 7A-38.5.
25 (3) Dispute. – Any matter relating to real estate under the jurisdiction of an
26 association about which the member and association cannot agree. The term
27 "dispute" does not include matters expressly exempted in subsection (b) of
28 this section.
29 (4) Executive board. – The body, regardless of name, designated in the
30 declaration to act on behalf of an association.
31 (5) Mediator. – A neutral person who acts to encourage and facilitate a
32 resolution of a dispute between an association and a member. A mediator
33 does not make a judgment as to the merits of the dispute.
34 (6) Member. – A person who is a member of an association of unit or lot owners
35 organized as allowed under North Carolina law, including G.S. 47C-3-101
36 and G.S. 47F-3-101.



* D R H 3 0 1 5 1 - L M F - 1 1 A *

1 (7) Party or parties. – An association or member who is involved in a dispute, as
2 that term is defined in subdivision (3) of this subsection.

3 (b) Voluntary Prelitigation Mediation. – Prior to filing a civil action, the parties to a
4 dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act),
5 Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an
6 association's declaration, bylaws, or rules and regulations may initiate mediation pursuant to
7 this section. However, disputes related solely to a member's failure to timely pay an association
8 assessment or any fines or fees associated with the levying or collection of an association
9 assessment are not eligible for mediation under this section.

10 (c) Initiation of Mediation. – Either an association or a member may initiate mediation
11 under this section by contacting the North Carolina Dispute Resolution Commission for the
12 name of a local community mediation center (hereinafter "center") or by contacting a center
13 directly. Upon contacting a center, either the association or member may supply to the center
14 the physical address of the other party, or the party's representative, and the party's telephone
15 number and e-mail address, if known. The center shall contact the party, or the party's
16 representative, to notify him or her of the request to mediate and shall offer to schedule
17 mediation for the parties. If the parties agree to mediation, the center shall make an effort to
18 schedule mediation at a time that is convenient for both parties. The center shall notify the
19 parties in writing of the date, time, and location of the mediation. The notification from the
20 center shall also include a copy of the provisions of this section and a brochure explaining the
21 mediation process. The center shall appoint a qualified employee or volunteer to conduct the
22 mediation, which shall be scheduled not later than 25 days after the center receives a request
23 from an association or a member to mediate a dispute.

24 (d) Mediation Procedure. – The following procedures shall apply to mediation under
25 this section:

26 (1) Attendance. – The mediator shall determine who may attend mediation. To
27 ensure a balanced and managed discussion of issues, the mediator may
28 require the executive board or a large group of members to designate one or
29 more persons to serve as their representatives in the mediation. The mediator
30 shall determine the number of persons that may be designated to participate
31 in mediation. A party's attorney may, but is not required to, attend a
32 mediation meeting.

33 (2) All parties are expected to attend mediation. However, any party who resides
34 more than 50 miles from the center shall be permitted to participate in the
35 mediation by telephone or other electronic means if the party notifies the
36 center of the request to participate in this manner at least five days prior to
37 the scheduled mediation. The center may allow a party to participate in
38 mediation by telephone or other electronic means if the party resides within
39 50 miles from the center if the center determines that the party has a
40 compelling reason to do so.

41 (3) If the parties cannot reach a final agreement in mediation because to do so
42 would require the approval of the full executive board or the approval of a
43 majority or some other percentage of the members of the association, the
44 mediator may recess the mediation meeting to allow the executive board or
45 members to review and vote on the agreement. The mediation shall
46 reconvene not later than 15 days after a recess is taken. If the date, time, and
47 location of reconvening is agreed to at the meeting from which a recess is
48 taken, the mediator is not required to provide further notice of the
49 reconvening meeting.

50 (4) If the parties can reach a final agreement in the mediation meeting, the
51 mediator shall put the agreement in writing and the parties shall sign it. The

1 mediator shall provide the parties with a copy of the agreement. Upon the
2 signing of the agreement by the parties, the agreement shall be binding and
3 enforceable. The drafting of an agreement under this subdivision shall not be
4 deemed to be the practice of law.

5 (e) Decline Mediation. – Either party to a dispute may decline mediation under this
6 section. If either party declines mediation after mediation has been initiated under subsection
7 (c) of this section but mediation has not been scheduled or mediation has been scheduled but
8 not held, the party declining mediation shall inform the center and the other party in writing of
9 his or her decision to decline mediation. No costs shall be assessed to any party if either party
10 declines mediation prior to the occurrence of an initial mediation meeting.

11 (f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be
12 shared equally by the parties. The fee for mediation shall be one hundred dollars (\$100.00) per
13 hour, but the total fee for mediation shall not, in any circumstance, exceed six hundred dollars
14 (\$600.00). A center may not charge any other fees for conducting the mediation or exceed the
15 fees authorized in this subsection. Fees shall be due and payable at the end of each mediation
16 meeting. When an attorney represents a party to the mediation, that party shall pay his or her
17 attorneys' fees.

18 (g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the
19 mediator shall prepare a certification stating the date on which the mediation was concluded
20 and the general results of the mediation including, as applicable, that an agreement was
21 reached, that mediation was attempted but an agreement was not reached, or that one or more
22 parties, to be specified in the certification, failed or refused without good cause to attend one or
23 more mediation meetings or otherwise participate in the mediation. A certificate under this
24 subsection shall be on a form approved by the center. If both parties participate in mediation
25 and a cause of action involving the dispute mediated is later filed, either party may file the
26 certificate with the clerk of court, and the parties shall not be required to mediate again under
27 any other provision of law. A certificate or any other evidence of any statement made and
28 conduct occurring during mediation under this section shall not be subject to discovery and
29 shall be inadmissible in any proceeding in the action from which the mediation arises.

30 (h) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of
31 other action with respect to a dispute described in subsection (b) of this section, including any
32 applicable statutes of limitations or statutes of repose, shall be tolled, upon the initiation of
33 mediation as provided in subsection (c) of this section, until 30 days after the date on which the
34 mediation is concluded as set forth in the mediator's certification.

35 (i) Association Duty to Notify. – Each association shall, in writing, notify the members
36 of the association each year that they may, pursuant to the provisions of this section, initiate
37 mediation to try to resolve a dispute as that term is defined in subdivision (a)(3) of this section.
38 The association shall publish the notice required in this subsection on the association's Web
39 site, but if the association does not have a Web site, the association shall publish the notice at
40 the same time and in the same manner as the names and addresses of all officers and board
41 members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103."

42 **SECTION 2.** This act becomes effective July 1, 2013, and applies to all
43 homeowner association disputes not specifically exempted by this act that occur on or after that
44 date.