



HOUSE BILL 278: HOAs/Voluntary Prelitigation Mediation

2013-2014 General Assembly

Committee:	Senate Judiciary I	Date:	June 4, 2013
Introduced by:	Reps. D. Ross, D. Hall	Prepared by:	Bill Patterson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *House Bill 278 would provide procedures and incentives for voluntary pre-litigation mediation to resolve disputes between an association of owners in a planned community or condominium and its members, other than those involving unpaid association assessments or resulting fines or fees.*

CURRENT LAW: Homeowners associations in planned communities, and unit owners associations in condominiums, are nonprofit corporations organized under Chapter 47C (the Condominium Act) or Chapter 47F (the Planned Community Act). In addition to statutory requirements, the rights and responsibilities of the members of the association are established in the declaration that created the community and in the bylaws, rules and regulations of the association, and are enforced by the association's governing board. If a dispute between an association and its member results in litigation in superior court, the case is subject to mandatory mediation.

BILL ANALYSIS: For association-member disputes not arising from unpaid association assessments or related fines or fees, House Bill 278 would establish the following voluntary pre-litigation mediation procedures:

- To request mediation, either party would contact a mediator referred by the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina.
- The mediator would notify the other party that mediation has been requested.
- If the parties agree to mediate, they must request the mediator in writing to set up the mediation, and the mediator must schedule the mediation within 25 days after receiving the written request.
- Unless otherwise agreed, the parties would share the cost of mediation equally.
- At the mediation's conclusion, the mediator would certify in writing whether or not an agreement was reached.
- If there is no settlement, the parties would not be required to mediate again in any subsequent litigation
- Any applicable time limitations on the filing of the civil action would be tolled from the time the mediation was initiated until 30 days after it was concluded.

The bill would also provide that statements made or conduct occurring during the mediation could not be used as evidence in any court proceeding, except in disciplinary proceedings before the State Bar or Dispute Resolution Commission, or in proceedings to enforce laws concerning juvenile or elder abuse. The bill would also require associations to send their members a yearly notice informing them of the option to mediate disputes.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and applies to all disputes occurring on or after that date.

Shelly DeAdder, counsel to House Judiciary Subcommittee A, and Wendy Graf-Ray, counsel to Senate Commerce, substantially contributed to this summary.

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