

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 175
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30076-LM-43A (02/13)

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

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT HOMEOWNER ASSOCIATIONS MAY NOT FORECLOSE
3 ON ASSOCIATION ASSESSMENT LIENS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 47C-3-116. Lien for assessments.

7 (a) Any assessment levied against a unit remaining unpaid for a period of 30 days or
8 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of
9 the clerk of superior court of the county in which the unit is located in the manner provided
10 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts
11 to ensure that its records contain the unit owner's current mailing address. No fewer than 15
12 days prior to filing the lien, the association shall mail a statement of the assessment amount due
13 by first-class mail to the physical address of the unit and the unit owner's address of record with
14 the association, and, if different, to the address for the unit owner shown on the county tax
15 records and the county real property records for the unit. If the unit owner is a corporation, the
16 statement shall also be sent by first-class mail to the mailing address of the registered agent for
17 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other
18 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are
19 enforceable as assessments under this section. ~~Except as provided in subsections (a1) and (a2)~~
20 ~~of this section, the association, acting through the executive board, may foreclose the claim of~~
21 ~~lien in like manner as a mortgage on real estate under power of sale or under Article 2A of~~
22 ~~Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The~~
23 ~~association shall not foreclose the claim of lien unless the executive board votes to commence~~
24 ~~the proceeding against the specific unit.~~

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

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

34 (b) The lien under this section is prior to all other liens and encumbrances on a unit
35 except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or
36 deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of



1 superior court, and (ii) liens for real estate taxes and other governmental assessments or charges
2 against the unit. This subsection does not affect the priority of mechanics' or materialmen's
3 liens.

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

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

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

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

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

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

49 (g) A claim of lien shall set forth the name and address of the association, the name of
50 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
51 amount of the lien claimed. The first page of the claim of lien shall contain the following

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

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

22 **"§ 47F-3-116. Lien for assessments.**

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

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

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

50 (b) The lien under this section is prior to all liens and encumbrances on a lot except (i)
51 liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust

1 on the lot) recorded before the docketing of the claim of lien in the office of the clerk of
2 superior court, and (ii) liens for real estate taxes and other governmental assessments and
3 charges against the lot. This subsection does not affect the priority of mechanics' or
4 materialmen's liens.

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

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

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

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

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

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

50 (g) A claim of lien shall set forth the name and address of the association, the name of
51 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the

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

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