

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 806\*  
Committee Substitute Favorable 4/30/09  
Committee Substitute #2 Favorable 5/11/09  
Senate Judiciary I Committee Substitute Adopted 8/4/09

Short Title: Notice on Liens for HOA Assessments.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

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

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

(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 may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(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 lot owner unless the fee is expressly allowed in the declaration. Any lien securing a 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.

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



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

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

7 (d) This section does not prohibit other actions to recover the sums for which  
8 subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of  
9 foreclosure.

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

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

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

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

47 (g) A claim of lien shall set forth the name and address of the association, the name of  
48 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the  
49 amount of the lien claimed. The first page of the claim of lien shall contain the following  
50 statement in print that is in boldface, capital letters and no smaller than the largest print used  
51 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST

1 **YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS**  
2 **ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR**  
3 **PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA**  
4 **LAW.'** The person signing the claim of lien on behalf of the association shall attach to and file  
5 with the claim of lien a certificate of service attesting to the attempt of service on the record  
6 owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of  
7 a copy of a summons and a complaint. If the actual service is not achieved, the person signing  
8 the claim of lien on behalf of the association shall be deemed to have met the requirements of  
9 this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1,  
10 Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail,  
11 postage prepaid to the physical address of the lot and the lot owner's address of record with the  
12 association, and, if different, to the address for the lot owner shown on the county tax records  
13 and the county real property records for the lot. In the event that the owner of record is not a  
14 natural person, and actual service is not achieved, the person signing the claim of lien on behalf  
15 of the association shall be deemed to have met the requirements of this subsection if service has  
16 been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through  
17 G.S. 1A-1, Rule 4(j)(9)."

18 **SECTION 2.** G.S. 47C-3-116 reads as rewritten:

19 **"§ 47C-3-116. Lien for assessments.**

20 (a) Any assessment levied against a unit remaining unpaid for a period of 30 days or  
21 longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of  
22 the clerk of superior court of the county in which the unit is located in the manner provided  
23 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts  
24 to ensure that its records contain the unit owner's current mailing address. No fewer than 15  
25 days prior to filing the lien, the association shall mail a statement of the assessment amount due  
26 by first-class mail to the physical address of the unit and the unit owner's address of record with  
27 the association, and, if different, to the address for the unit owner shown on the county tax  
28 records and the county real property records for the unit. If the unit owner is a corporation, the  
29 statement shall also be sent by first-class mail to the mailing address of the registered agent for  
30 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other  
31 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are  
32 enforceable as assessments under this section. Except as provided in subsections (a1) and (a2)  
33 of this section, the association's lien may be foreclosed in like manner as a mortgage on real  
34 estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

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

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

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

1 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien  
2 are instituted within three years after the docketing thereof in the office of the clerk of superior  
3 court.

4 (d) This section does not prohibit actions to recover sums for which subsection (a)  
5 creates a lien or prohibit an association taking a deed in lieu of foreclosure.

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

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

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

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

43 (g) A claim of lien shall set forth the name and address of the association, the name of  
44 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the  
45 amount of the lien claimed. The first page of the claim of lien shall contain the following  
46 statement in print that is in boldface, capital letters and no smaller than the largest print used  
47 elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST  
48 YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS  
49 ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR  
50 PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA  
51 LAW.' The person signing the claim of lien on behalf of the association shall attach to and file

1 with the claim of lien a certificate of service attesting to the attempt of service on the record  
2 owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of  
3 a copy of a summons and a complaint. If the actual service is not achieved, the person signing  
4 the claim of lien on behalf of the association shall be deemed to have met the requirements of  
5 this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1,  
6 Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail,  
7 postage prepaid to the physical address of the unit and the unit owner's address of record with  
8 the association, and, if different, to the address for the unit owner shown on the county tax  
9 records and the county real property records for the unit. In the event that the owner of record is  
10 not a natural person, and actual service is not achieved, the person signing the claim of lien on  
11 behalf of the association shall be deemed to have met the requirements of this subsection if  
12 service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule  
13 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

14           **SECTION 3.** This act becomes effective October 1, 2009, and applies to claims of  
15 lien filed on or after that date.