

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 961*

Short Title: Notice on Liens for HOA Assessments.

(Public)

Sponsors: Senator Nesbitt.

Referred to: Judiciary I.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT NOTICE OF A CLAIM OF LIEN FOR ASSESSMENTS
FILED BY A HOMEOWNERS ASSOCIATION BE SERVED ON THE LOT OWNER IN
THE SAME MANNER AS SERVICE OF A SUMMONS IN A CIVIL ACTION.

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. Notice of the claim of lien shall be served on the lot owner in any manner provided by Rule 4 of the Rules of Civil Procedure for service of summons, including service by personal delivery, or by registered mail or certified mail, return receipt requested. 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. Prior to initiating a foreclosure proceeding under this subsection, the association must produce an affidavit of service of the claim of lien, and if service was made by publication in accordance with Rule 4(j1) of the Rules of Civil Procedure, the affidavit must set forth the specific facts and circumstances explaining why the lot owner cannot with due diligence be served by personal delivery, registered or certified mail. The affidavit shall be filed with the foreclosure notice of hearing.

(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 superior court, and (ii) liens for real estate taxes and other governmental assessments and



1 charges against the lot. This subsection does not affect the priority of mechanics' or
2 materialmen's liens.

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

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

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

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

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

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

46 (g) A claim of lien shall set forth the name and address of the association, the name of
47 the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the
48 amount of the lien claimed."

49 **SECTION 2.** This act becomes effective October 1, 2009, and applies to claims of
50 lien filed on or after that date.