

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 542
Committee Substitute Favorable 4/26/23

Short Title: Protect Homeowners' Rights.

(Public)

Sponsors:

Referred to:

April 3, 2023

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A MINIMUM AMOUNT FOR DELINQUENT ASSESSMENTS BEFORE A UNIT OWNERS' ASSOCIATION OR HOMEOWNERS' ASSOCIATION CAN BEGIN FORECLOSURE PROCEEDINGS AND TO STRENGTHEN NOTICE OF DELINQUENT ASSESSMENTS GIVEN BY THE ASSOCIATIONS TO OWNERS TO APPRISE OWNERS OF THE DELINQUENCY AND POTENTIAL FILING OF A CLAIM OF LIEN TO INITIATE FORECLOSURE.

The General Assembly of North Carolina enacts:

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

"§ 47C-3-116. Lien for sums due the association; enforcement.

(a) ~~Any assessment~~ Any delinquent assessment of an amount of two thousand five hundred dollars (\$2,500) or one year of unit owners' association assessments, whichever is lesser, attributable to a unit ~~which that~~ remains unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

(b) The association must provide proper notice of delinquent assessments to the unit owner before filing a claim of lien. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current physical mailing address, address, current electronic mailing address, and current telephone number. No fewer than 15 days prior to filing the lien, the association shall ~~mail~~ do all of the following:

(1) Mail a statement of the assessment amount due by first class mail to the physical address of the unit and the unit owner's address of record with the association and, if different, to the address for the unit owner shown on the county tax records for the unit. If the unit owner is a corporation or limited liability company, the statement shall also be sent by first class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant unit or to a unit for which there is no United States postal address.

(2) Send a statement of the assessment amount due via electronic mail.



- (3) Attempt to notify the unit owner via telephone of the delinquent assessments and the delivery details of the statement of the assessment amount due.
- (4) If the association is unable to locate the current physical mailing address or current electronic mailing address of the unit owner, the association shall contact the closing attorney who represented the unit owner in the real estate transaction for the property as indicated in public records and attempt to obtain the contact information from that person.

Nothing in this subsection shall prevent the person responsible for providing the contact information from seeking reasonable compensation for the procurement process.

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the unit at the time the claim of lien is filed, a description of the unit, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of 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 regular, first class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. The association shall also send a copy of the claim of lien and certificate of service via electronic mail to the unit owner. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant unit or to a unit for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

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

"§ 47F-3-116. Lien for sums due the association; enforcement.

(a) Any assessment—Any delinquent assessment of an amount of two thousand five hundred dollars (\$2,500) or one year of homeowners' association assessments, whichever is lesser, attributable to a lot which—that remains 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 in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, 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 subject to the claim of lien under this section as well as any other sums due

and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

(b) The association must provide proper notice of delinquent assessments to the lot owner before filing a claim of lien. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current physical mailing address, address, current electronic mailing address, and current telephone number. No fewer than 15 days prior to filing the lien, the association shall ~~mail~~ do all of the following:

(1) 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 for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

(2) Send a statement of the assessment amount due via electronic mail.

(3) Attempt to notify the lot owner via telephone of the delinquent assessments and the delivery details of the statement of the assessment amount due.

(4) If the association is unable to locate the current physical mailing address or current electronic mailing address of the lot owner, the association shall contact the closing attorney who represented the lot owner in the real estate transaction for the property as indicated in public records and attempt to obtain the contact information from that person.

Nothing in this subsection shall prevent the person responsible for providing the contact information from seeking reasonable compensation for the procurement process.

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of 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 regular, first-class mail, postage prepaid 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. The association shall also send a copy of the claim of lien and certificate of service via electronic mail to the lot owner. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3)

1 through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the
2 association is not required to mail a claim of lien to an address which is known to be a vacant lot
3 on which no dwelling has been constructed or to a lot for which there is no United States postal
4 address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are
5 instituted within three years after the filing of the claim of lien in the office of the clerk of superior
6 court.

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8 **SECTION 3.** This act becomes effective December 1, 2023, and applies to claims
9 of lien filed on or after that date.