

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 850

Short Title: Liens/Condominiums and Planned Communities. (Public)

Sponsors: Senator Vaughan.

Referred to: Judiciary II.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO STABILIZE TITLES AND TO PROVIDE A UNIFORM PROCEDURE TO
3 ENFORCE LIENS FOR CONDOMINIUM AND PLANNED COMMUNITY
4 ASSOCIATION ASSESSMENTS.

5 The General Assembly of North Carolina enacts:

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

7 "§ 47C-3-116. Lien for assessments.

8 ...

9 (a3) In addition to the procedures set forth under Article 2A of Chapter 45 of the General
10 Statutes, a nonjudicial foreclosure of an association assessment lien under Article 2A of
11 Chapter 45 of the General Statutes shall be conducted in compliance with the following:

12 (1) The association shall be deemed to have a power of sale for purposes of the
13 enforcement of liens using a nonjudicial foreclosure proceeding.

14 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
15 the General Statutes shall mean the association when the association uses the
16 nonjudicial foreclosure procedures provided in this section. The term
17 "security instrument" as used in Article 2A of Chapter 45 of the General
18 Statutes shall mean the association assessment lien held by the association
19 pursuant to this section and the declaration. Notwithstanding the provisions
20 of this subdivision or Article 2A of Chapter 45 of the General Statutes, all
21 nonjudicial foreclosure proceedings and sales conducted under this section
22 shall be conducted by a trustee duly appointed pursuant to subdivision (4) of
23 this subsection.

24 (3) After the association has filed an association assessment lien with the clerk
25 of superior court in the county where the condominium is located and prior
26 to the commencement of a nonjudicial foreclosure proceeding, the
27 association shall give to the unit owner notice of the association's intention
28 to commence a nonjudicial foreclosure proceeding to enforce the association
29 assessment lien containing the information required by G.S. 45-21.16(c)(5a).

30 (4) The association shall appoint a trustee to conduct the nonjudicial foreclosure
31 proceeding and sale. The appointment of the trustee shall be filed in the
32 office of the register of deeds in the county in which the condominium is
33 located. It shall be the duty of the register of deeds in whose office the
34 appointment is filed to record and index the appointment of the trustee in the
35 names of the unit owner, the trustee, and the association. The association
36 may, from time to time, remove the trustee and appoint a successor trustee
37 by making a similar filing with the register of deeds. At the time a



1 nonjudicial foreclosure proceeding is commenced, a copy of the appointment
2 of trustee that has been filed with the register of deeds shall be filed with the
3 clerk of superior court in the county in which the condominium is located.

4 (5) If prior to the expiration of the upset bid period provided by G.S. 45-21.27,
5 the unit owner satisfies the debt secured by the association assessment lien
6 that is the subject of the nonjudicial foreclosure sale and pays all expenses
7 and costs incurred in filing and enforcing the association assessment lien,
8 including advertising costs and the trustee's commission, the association
9 shall dismiss the foreclosure action and cancel the association assessment
10 lien of record pursuant to the provisions of G.S. 45-36.3. The unit owner
11 shall have all rights under Article 4 of Chapter 45 of the General Statutes to
12 ensure the association's satisfaction of the association assessment lien.

13 (6) Any person, other than the trustee, may bid at the foreclosure sale. Unless
14 otherwise provided in the declaration or bylaws of the condominium, the
15 association may bid and purchase the unit at a foreclosure sale. If the
16 association purchases the unit at the sale, the association may own, lease,
17 encumber, exchange, sell, or convey the unit.

18 (7) Upon the expiration of the upset bid period provided by G.S. 45-21.27, the
19 trustee shall become vested with legal title to the unit with full power and
20 authority to execute a deed for the unit to the purchaser at the foreclosure
21 sale.

22 (8) The trustee shall be paid a commission for services rendered which shall
23 include fees and expenses reasonably incurred by the trustee in connection
24 with the foreclosure, whether or not a sale is held. Except as provided in
25 subsection (e) of this section, the trustee's commission shall be paid without
26 regard to any limitations on trustee compensation otherwise provided by law
27 including, without limitation, G.S. 45-21.15.

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

34 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
35 are instituted within three years after the ~~docketing-filing~~ filing thereof in the office of the clerk of
36 superior court.

37 ...

38 (e) A judgment, decree, or order in any action brought under this section shall include
39 ~~costs and costs,~~ reasonable attorneys' ~~fees-fees,~~ and trustee commissions for the prevailing party.
40 If the unit owner does not contest the collection of debt and enforcement of a lien after the
41 expiration of the 15-day period following notice as required in subsection (e1) of this section,
42 then reasonable attorneys' fees and trustee commissions shall not exceed one thousand two
43 hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and
44 enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or
45 raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and
46 lien asserted or the association's right to collect the debt and enforce the lien as provided in this
47 section. The attorneys' fee and trustee commission limitation in this subsection shall not apply
48 to judicial foreclosures or proceedings authorized under subsection (d) of this ~~section or~~
49 ~~G.S. 47C-4-117, section, G.S. 47C-4-117, 45-21.34, or 45-21.36.~~

50 (e1) A unit owner may not be required to pay attorneys' ~~fees-and-fees,~~ trustee
51 commissions, or court costs until the unit owner is notified in writing of the association's intent

1 to seek payment of attorneys' ~~fees~~fees, trustee commissions, and court costs. The notice must
2 be sent by first-class mail to the property address and, if different, to the mailing address for the
3 unit owner in the association's records. The notice shall set out the outstanding balance due as
4 of the date of the notice and state that the unit owner has 15 days from the mailing of the notice
5 by first-class mail to pay the outstanding balance without ~~the attorneys' fees and~~fees, trustee
6 commissions, or court costs. If the unit owner pays the outstanding balance within this period,
7 then the unit owner shall have no obligation to pay attorneys' ~~fees and~~fees, trustee
8 commissions, or court costs. The notice shall also inform the unit owner of the opportunity to
9 contact a representative of the association to discuss a payment schedule for the outstanding
10 balance as provided in subsection (e2) of this section and shall provide the name and telephone
11 number of the representative.

12 (e2) The association, acting through its executive board and in the board's sole
13 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
14 association nor the unit owner is obligated to offer or accept any proposed installment schedule.
15 Reasonable administrative fees and costs for accepting and processing installments may be
16 added to the outstanding balance and included in an installment payment schedule. Reasonable
17 attorneys' fees and trustee commissions may be added to the outstanding balance and included
18 in an installment schedule only after the unit owner has been given notice as required in
19 subsection (e1) of this section.

20"

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

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

23 ...

24 (a3) In addition to the procedures set forth under Article 2A of Chapter 45 of the General
25 Statutes, a nonjudicial foreclosure of an association assessment lien under Article 2A of
26 Chapter 45 of the General Statutes shall be conducted in compliance with the following:

27 (1) The association shall be deemed to have a power of sale for purposes of the
28 enforcement of liens using a nonjudicial foreclosure proceeding.

29 (2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of
30 the General Statutes shall mean the association when the association uses the
31 nonjudicial foreclosure procedures provided in this section. The term
32 "security instrument" as used in Article 2A of Chapter 45 of the General
33 Statutes shall mean the association assessment lien held by the association
34 pursuant to this section and the declaration. Notwithstanding the provisions
35 of this subdivision or Article 2A of Chapter 45 of the General Statutes, all
36 nonjudicial foreclosure proceedings and sales conducted under this section
37 shall be conducted by a trustee duly appointed pursuant to subdivision (4) of
38 this subsection.

39 (3) After the association has filed an association assessment lien with the clerk
40 of superior court in the county where the planned community is located and
41 prior to the commencement of a nonjudicial foreclosure proceeding, the
42 association shall give to the lot owner notice of the association's intention to
43 commence a nonjudicial foreclosure proceeding to enforce the association
44 assessment lien containing the information required by G.S. 45-21.16(c)(5a).

45 (4) The association shall appoint a trustee to conduct the nonjudicial foreclosure
46 proceeding and sale. The appointment of the trustee shall be filed in the
47 office of the register of deeds in the county in which the planned community
48 is located. It shall be the duty of the register of deeds in whose office the
49 appointment is filed to record and index the appointment of the trustee in the
50 names of the lot owner, the trustee, and the association. The association may,
51 from time to time, remove the trustee and appoint a successor trustee by

1 making a similar filing with the register of deeds. At the time a nonjudicial
2 foreclosure proceeding is commenced, a copy of the appointment of trustee
3 that has been filed with the register of deeds shall be filed with the clerk of
4 superior court in the county in which the planned community is located.

5 (5) If prior to the expiration of the upset bid period provided by G.S. 45-21.27,
6 the lot owner satisfies the debt secured by the association assessment lien
7 that is the subject of the nonjudicial foreclosure sale and pays all expenses
8 and costs incurred in filing and enforcing the association assessment lien,
9 including advertising costs and the trustee's commission, the association
10 shall dismiss the foreclosure action and cancel the association assessment
11 lien of record pursuant to the provisions of G.S. 45-36.3. The lot owner shall
12 have all rights under Article 4 of Chapter 45 of the General Statutes to
13 ensure the association's satisfaction of the association assessment lien.

14 (6) Any person, other than the trustee, may bid at the foreclosure sale. Unless
15 otherwise provided in the declaration or bylaws of the planned community,
16 the association may bid and purchase the lot at a foreclosure sale. If the
17 association purchases the lot at the sale, the association may own, lease,
18 encumber, exchange, sell, or convey the lot.

19 (7) Upon the expiration of the upset bid period provided by G.S. 45-21.27, the
20 trustee shall become vested with legal title to the lot with full power and
21 authority to execute a deed for the lot to the purchaser at the foreclosure sale.

22 (8) The trustee shall be paid a commission for services rendered which shall
23 include fees and expenses reasonably incurred by the trustee in connection
24 with the foreclosure, whether or not a sale is held. Except as provided in
25 subsection (e) of this section, the trustee's commission shall be paid without
26 regard to any limitations on trustee compensation otherwise provided by law
27 including, without limitation, G.S. 45-21.15.

28 (b) The lien under this section is prior to all liens and encumbrances on a lot except (i)
29 liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust
30 on the lot) recorded before the ~~docketing-filing~~ filing of the claim of lien in the office of the clerk of
31 superior court, and (ii) liens for real estate taxes and other governmental assessments and
32 charges against the lot. This subsection does not affect the priority of mechanics' or
33 materialmen's liens.

34 (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
35 are instituted within three years after the ~~docketing-filing~~ filing of the claim of lien in the office of the
36 clerk of superior court.

37 ...

38 (e) A judgment, decree, or order in any action brought under this section shall include
39 ~~costs and costs,~~ reasonable attorneys' ~~fees-fees,~~ and trustee commissions for the prevailing party.
40 If the lot owner does not contest the collection of debt and enforcement of a lien after the
41 expiration of the 15-day period following notice as required in subsection (e1) of this section,
42 then reasonable attorneys' fees and trustee commissions shall not exceed one thousand two
43 hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and
44 enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or
45 raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and
46 lien asserted or the association's right to collect the debt and enforce the lien as provided in this
47 section. The attorneys' fee and trustee commission limitation in this subsection shall not apply
48 to judicial foreclosures or to proceedings authorized under subsection (d) of this ~~section or~~
49 ~~G.S. 47F-3-120;section, G.S. 47F-3-120, 45-21.34, or 45-21.36.~~

50 (e1) A lot owner may not be required to pay attorneys' ~~fees-andfees,~~ trustee
51 commissions, or court costs until the lot owner is notified in writing of the association's intent

1 to seek payment of attorneys' ~~fees~~fees, trustee commissions, and court costs. The notice must
2 be sent by first-class mail to the property address and, if different, to the mailing address for the
3 lot owner in the association's records. The notice shall set out the outstanding balance due as of
4 the date of the notice and state that the lot owner has 15 days from the mailing of the notice by
5 first-class mail to pay the outstanding balance without ~~the~~attorneys' fees and fees, trustee
6 commissions, or court costs. If the lot owner pays the outstanding balance within this period,
7 then the lot owner shall have no obligation to pay attorneys' ~~fees and fees, trustee commissions,~~
8 or court costs. The notice shall also inform the lot owner of the opportunity to contact a
9 representative of the association to discuss a payment schedule for the outstanding balance as
10 provided in subsection (e2) of this section and shall provide the name and telephone number of
11 the representative.

12 (e2) The association, acting through its executive board and in the board's sole
13 discretion, may agree to allow payment of an outstanding balance in installments. Neither the
14 association nor the lot owner is obligated to offer or accept any proposed installment schedule.
15 Reasonable administrative fees and costs for accepting and processing installments may be
16 added to the outstanding balance and included in an installment payment schedule. Reasonable
17 attorneys' fees and trustee commissions may be added to the outstanding balance and included
18 in an installment schedule only after the lot owner has been given notice as required in
19 subsection (e1) of this section.

20"

21 **SECTION 3.** Article 3 of Chapter 47C of the General Statutes is amended by
22 adding a new section to read as follows:

23 "**§ 47C-3-123. Validation of certain nonjudicial foreclosure proceedings.**

24 All nonjudicial foreclosure proceedings and sales of real property by an association that
25 were consummated before October 1, 2009, pursuant to the provisions of this Chapter or
26 provisions contained in the declaration of the unit ownership or condominium are declared to
27 be valid unless an action to set aside the foreclosure is commenced within one year after
28 October 1, 2009. Nothing contained in this section shall be construed as applicable to or
29 affecting pending litigation."

30 **SECTION 4.** Article 3 of Chapter 47F of the General Statutes is amended by
31 adding a new section to read as follows:

32 "**§ 47F-3-123. Validation of certain nonjudicial foreclosure proceedings.**

33 All nonjudicial foreclosure proceedings and sales of real property by an association which
34 were consummated before October 1, 2009, pursuant to the provisions of this Chapter or
35 provisions contained in the declaration of the planned community are declared to be valid
36 unless an action to set aside the foreclosure is commenced within one year after October 1,
37 2009. Nothing contained in this section shall be construed as applicable to or affecting pending
38 litigation."

39 **SECTION 5.** This act becomes effective October 1, 2009.