

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 183

Short Title: HOA/Limit Foreclosures. (Public)

Sponsors: Representatives R. Moore, Bryant, Hamilton, and Gill (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

February 28, 2011

A BILL TO BE ENTITLED

AN ACT PROHIBITING A HOMEOWNERS ASSOCIATION FROM FORECLOSING ON
PROPERTY WHERE THE DEBT SECURING THE ASSOCIATION ASSESSMENT
LIEN CONSISTS SOLELY OF UNPAID HOMEOWNERS ASSOCIATION DUES OR
OTHER COSTS ASSOCIATED WITH UNPAID HOMEOWNERS ASSOCIATION
DUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47A-22 reads as rewritten:

"§ 47A-22. **Liens for unpaid common expenses; recordation; priorities; foreclosure.**

...

(b) Provided the same is duly filed in accordance with the provisions contained in subsection (a) of this section, a lien created by nonpayment of a unit owner's pro rata share of the common expenses may be foreclosed by suit by the manager or board of directors, acting on behalf of the unit owners, in like manner as a deed of trust or mortgage of real ~~property~~ property, except as provided in subsection (b1) of this section. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b1) An association may not foreclose an association assessment lien under Article 29A of Chapter 1 of the General Statutes or Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of unpaid homeowners association dues, interest or late fees on unpaid homeowners association dues, or attorneys' fees incurred by the association solely associated with unpaid homeowners association dues. However, the association may collect the lien as a money judgment.

...."

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

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

(a) Any assessment levied against a unit remaining 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 herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts



1 to ensure that its records contain the unit owner's current mailing address. No fewer than 15
2 days prior to filing the lien, the association shall mail a statement of the assessment amount due
3 by first-class mail to the physical address of the unit and the unit owner's address of record with
4 the association, and, if different, to the address for the unit owner shown on the county tax
5 records and the county real property records for the unit. If the unit owner is a corporation, the
6 statement shall also be sent by first-class mail to the mailing address of the registered agent for
7 the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other
8 charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are
9 enforceable as assessments under this section. Except as provided in subsections ~~(a1)~~ and
10 ~~(a2)~~(a1), (a2), and (a3) of this section, the association's lien may be foreclosed in like manner
11 as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General
12 Statutes.

13 ...

14 (a3) An association may not foreclose an association assessment lien under Article 29A
15 of Chapter 1 of the General Statutes or Article 2A of Chapter 45 of the General Statutes if the
16 debt securing the lien consists solely of unpaid homeowners association dues, interest or late
17 fees on unpaid homeowners association dues, or attorneys' fees incurred by the association
18 solely associated with unpaid homeowners association dues. However, the association may
19 collect the lien as a money judgment.

20"

21 **SECTION 3.** 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
36 ~~(a2)~~(a1), (a2), and (a3) of this section, the association may foreclose the claim of lien in like
37 manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the
38 General Statutes.

39 ...

40 (a3) An association may not foreclose an association assessment lien under Article 29A
41 of Chapter 1 of the General Statutes or Article 2A of Chapter 45 of the General Statutes if the
42 debt securing the lien consists solely of unpaid homeowners association dues, interest or late
43 fees on unpaid homeowners association dues, or attorneys' fees incurred by the association
44 solely associated with unpaid homeowners association dues. However, the association may
45 collect the lien as a money judgment.

46"

47 **SECTION 4.** This act becomes effective October 1, 2011, and applies to
48 assessments for homeowners association dues being levied and proceedings for collection
49 commenced on or after that date.