

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2013
HOUSE BILL 278 RATIFIED BILL

AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE PRIOR TO FILING A CIVIL ACTION.

Whereas, homeowners associations in condominium and planned communities serve a vital role in our State by maintaining common areas, providing recreational facilities and neighborhood meeting places, and adopting rules and regulations to help preserve property values; and

Whereas, often disputes arise between homeowners associations and their members, which either do not constitute the basis for a legal cause of action or result in costly litigation; and

Whereas, the State has an interest in encouraging homeowners associations and their members to voluntarily mediate disputes in a manner that will allow both sides to be heard and to reach a mutually satisfactory agreement; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read as follows:

"§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association disputes.

(a) Definitions. – The following definitions apply in this section:

(1) Association. – An association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(2) Dispute. – Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree. The term "dispute" does not include matters expressly exempted in subsection (b) of this section.

(3) Executive board. – The body, regardless of name, designated in the declaration to act on behalf of an association.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a dispute between an association and a member.

(5) Member. – A person who is a member of an association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(6) Party or parties. – An association or member who is involved in a dispute, as that term is defined in subdivision (2) of this subsection.

(b) Voluntary Prelitigation Mediation. – Prior to filing a civil action, the parties to a dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation pursuant to this section. However, disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered under this section.

(c) Initiation of Mediation. – Either an association or a member may contact the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a mediator or community mediation center. Upon contacting a mediator, either the association or member may supply to the mediator the physical address of the other party, or the party's representative, and the party's telephone number and e-mail address, if known. The mediator shall contact the party, or the party's representative, to notify him or her of the request to mediate. If the parties agree to mediate, they shall request in writing that the mediator schedule the mediation. The mediator shall then notify the parties in writing of the date, time, and location of the mediation, which shall be scheduled not later than 25 days after the mediator receives the written request from the parties.

(d) Mediation Procedure. – The following procedures shall apply to mediation under this section:

(1) Attendance. – The mediator shall determine who may attend mediation. The mediator may require the executive board or a large group of members to designate one or more persons to serve as their representatives in the mediation.

(2) All parties are expected to attend mediation. The mediator may allow a party to participate in mediation by telephone or other electronic means if the mediator determines that the party has a compelling reason to do so.

(3) If the parties cannot reach a final agreement in mediation because to do so would require the approval of the full executive board or the approval of a majority or some other percentage of the members of the association, the mediator may recess the mediation meeting to allow the executive board or members to review and vote on the agreement.

(e) Decline Mediation. – Either party to a dispute may decline mediation under this section. If either party declines mediation after mediation has been initiated under subsection (c) of this section but mediation has not been held, the party declining mediation shall inform the mediator and the other party in writing of his or her decision to decline mediation. No costs shall be assessed to any party if either party declines mediation prior to the occurrence of an initial mediation meeting.

(f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and payable at the end of each mediation meeting. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and a statement that an agreement was reached or that mediation was attempted but an agreement was not reached. If both parties participate in mediation and a cause of action involving the dispute mediated is later filed, either party may file the certificate with the clerk of court, and the parties shall not be required to mediate again under any provision of law.

(h) Inadmissibility of Evidence. – Evidence of statements made and conduct occurring during mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in a civil action arising from the dispute which was the subject of that

mediation; except proceedings to enforce or rescind a settlement agreement reached at that mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation under this section.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediation pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind the settlement agreement; except in disciplinary hearings before the State Bar or Dispute Resolution Commission and proceedings to enforce laws concerning juvenile or elder abuse, and except in proceedings to enforce or rescind an agreement reached in a mediation under this section, but only to attest to the signing of the agreement.

(i) Time Periods Tolloed. – Time periods relating to the filing of a civil action, including any applicable statutes of limitations or statutes of repose, with respect to a dispute described in subsection (a) of this section, shall be tolled upon the initiation of mediation under this section until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification. For purposes of this section, "initiation of mediation" shall be defined as the date upon which both parties have signed the written request to schedule the mediation.

(j) Association Duty to Notify. – Each association shall, in writing, notify the members of the association each year that they may initiate mediation under this section to try to resolve a dispute with the association. The association shall publish the notice required in this subsection on the association's Web site; but if the association does not have a Web site, the association shall publish the notice at the same time and in the same manner as the names and addresses of all officers and board members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103."

SECTION 2. This act becomes effective July 1, 2013, and applies to all homeowners and condominium association disputes not specifically exempted by this act that occur on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 2013.

s/ Daniel J. Forest

President of the Senate

s/ Thom Tillis

Speaker of the House of Representatives