

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 278

Short Title: HOAs/Voluntary Prelitigation Mediation. (Public)

Sponsors: Representatives D. Ross and D. Hall (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary Subcommittee A, if favorable, Rules, Calendar, and Operations of the House.

March 13, 2013

A BILL TO BE ENTITLED

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 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) Community mediation center. – A community mediation center established  
under G.S. 7A-38.5.

(3) 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.

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

(5) Mediator. – A neutral person who acts to encourage and facilitate a  
resolution of a dispute between an association and a member. A mediator  
does not make a judgment as to the merits of the dispute.



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

4           (7)    Party or parties. – An association or member who is involved in a dispute, as  
5                    that term is defined in subdivision (3) of this subsection.

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

13           (c)    Initiation of Mediation. – Either an association or a member may initiate mediation  
14                   under this section by contacting the North Carolina Dispute Resolution Commission for the  
15                   name of a local community mediation center (hereinafter "center") or by contacting a center  
16                   directly. Upon contacting a center, either the association or member may supply to the center  
17                   the physical address of the other party, or the party's representative, and the party's telephone  
18                   number and e-mail address, if known. The center shall contact the party, or the party's  
19                   representative, to notify him or her of the request to mediate and shall offer to schedule  
20                   mediation for the parties. If the parties agree to mediation, the center shall make an effort to  
21                   schedule mediation at a time that is convenient for both parties. The center shall notify the  
22                   parties in writing of the date, time, and location of the mediation. The notification from the  
23                   center shall also include a copy of the provisions of this section and a brochure explaining the  
24                   mediation process. The center shall appoint a qualified employee or volunteer to conduct the  
25                   mediation, which shall be scheduled not later than 25 days after the center receives a request  
26                   from an association or a member to mediate a dispute.

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

29           (1)    Attendance. – The mediator shall determine who may attend mediation. To  
30                   ensure a balanced and managed discussion of issues, the mediator may  
31                   require the executive board or a large group of members to designate one or  
32                   more persons to serve as their representatives in the mediation. The mediator  
33                   shall determine the number of persons that may be designated to participate  
34                   in mediation. A party's attorney may, but is not required to, attend a  
35                   mediation meeting.

36           (2)    All parties are expected to attend mediation. However, any party who resides  
37                   more than 50 miles from the center shall be permitted to participate in the  
38                   mediation by telephone or other electronic means if the party notifies the  
39                   center of the request to participate in this manner at least five days prior to  
40                   the scheduled mediation. The center may allow a party to participate in  
41                   mediation by telephone or other electronic means if the party resides within  
42                   50 miles from the center if the center determines that the party has a  
43                   compelling reason to do so.

44           (3)    If the parties cannot reach a final agreement in mediation because to do so  
45                   would require the approval of the full executive board or the approval of a  
46                   majority or some other percentage of the members of the association, the  
47                   mediator may recess the mediation meeting to allow the executive board or  
48                   members to review and vote on the agreement. The mediation shall  
49                   reconvene not later than 15 days after a recess is taken. If the date, time, and  
50                   location of reconvening is agreed to at the meeting from which a recess is

1 taken, the mediator is not required to provide further notice of the  
2 reconvening meeting.

3 (4) If the parties can reach a final agreement in the mediation meeting, the  
4 mediator shall put the agreement in writing and the parties shall sign it. The  
5 mediator shall provide the parties with a copy of the agreement. Upon the  
6 signing of the agreement by the parties, the agreement shall be binding and  
7 enforceable. The drafting of an agreement under this subdivision shall not be  
8 deemed to be the practice of law.

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

15 (f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be  
16 shared equally by the parties. The fee for mediation shall be one hundred dollars (\$100.00) per  
17 hour, but the total fee for mediation shall not, in any circumstance, exceed six hundred dollars  
18 (\$600.00). A center may not charge any other fees for conducting the mediation or exceed the  
19 fees authorized in this subsection. Fees shall be due and payable at the end of each mediation  
20 meeting. When an attorney represents a party to the mediation, that party shall pay his or her  
21 attorneys' fees.

22 (g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the  
23 mediator shall prepare a certification stating the date on which the mediation was concluded  
24 and the general results of the mediation including, as applicable, that an agreement was  
25 reached, that mediation was attempted but an agreement was not reached, or that one or more  
26 parties, to be specified in the certification, failed or refused without good cause to attend one or  
27 more mediation meetings or otherwise participate in the mediation. A certificate under this  
28 subsection shall be on a form approved by the center. If both parties participate in mediation  
29 and a cause of action involving the dispute mediated is later filed, either party may file the  
30 certificate with the clerk of court, and the parties shall not be required to mediate again under  
31 any other provision of law. A certificate or any other evidence of any statement made and  
32 conduct occurring during mediation under this section shall not be subject to discovery and  
33 shall be inadmissible in any proceeding in the action from which the mediation arises.

34 (h) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of  
35 other action with respect to a dispute described in subsection (b) of this section, including any  
36 applicable statutes of limitations or statutes of repose, shall be tolled, upon the initiation of  
37 mediation as provided in subsection (c) of this section, until 30 days after the date on which the  
38 mediation is concluded as set forth in the mediator's certification.

39 (i) Association Duty to Notify. – Each association shall, in writing, notify the members  
40 of the association each year that they may, pursuant to the provisions of this section, initiate  
41 mediation to try to resolve a dispute as that term is defined in subdivision (a)(3) of this section.  
42 The association shall publish the notice required in this subsection on the association's Web  
43 site, but if the association does not have a Web site, the association shall publish the notice at  
44 the same time and in the same manner as the names and addresses of all officers and board  
45 members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103."

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