

New Legislation

North Carolina House Bill 278 concerning voluntary **Prelitigation Mediation** for community association disputes was ratified in 2013. **The law took effect July 1, 2013 and applies to all community association disputes (except for a few exempted ones.)**

What's the purpose of the new law?

There was no prior prohibition of mediation in community association disputes, whether by statute or typical governing documents. The association or an owner could have always had requested to voluntarily mediate a disagreement. As a result, the **new legislation is aimed at making sure owners know they have the right to request mediation, rather than creating a new right to mediation.**

What are key aspects of the Prelitigation Mediation law?

1. In the event of a dispute, the association or owner may contact the N.C. Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a mediator or community mediation center.
2. The mediator must contact the other party, who can decline mediation (i.e. this is a voluntary process).
3. If both parties wish to mediate, the mediation must be scheduled within 25 days.
4. Regardless of whether mediation resolves the conflict, the cost of mediation (including the mediator's fees) is shared equally between the parties unless agreed otherwise.

Are there any downsides to mediation?

The new law provides "time periods relating to the filing of a civil action, including any applicable statutes of limitations or statutes of repose and 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." Statutes of limitation and repose give finality to disputes by setting the date by which a lawsuit must be filed. Under the new law, if an owner has a potential claim against his/her association (or the association against the owner) and the deadline for filing a lawsuit is near, initiating mediation would extend any deadlines throughout the mediation process. In the event you have questions about how mediation might affect the filing of a lawsuit, speak to an attorney.

What are the association's obligations under the new statute?

While mediation is voluntary, the statute mandates that associations notify members each year of the right to initiate mediation. The law provides that the notice should be published on the associations website, and if there is no website, the forwarded with the names and addresses of association officers and board members as required by NCGS 47C-3-103 and 47F-3-103.

YOUR RIGHT TO INITIATE MEDIATION

Pursuant to N.C.G.S. § 7A-38.3f, members are notified that they may initiate mediation to try to resolve a dispute with the association; however, the association may decline mediation. Any costs of mediation, including the mediator's fees, shall be shared equally by the parties. (NOTE: Disputes related solely to a member's failure to timely pay an association assessment or any fines or fees association with the levying or collection of an association assessment are not covered by the mediation statute.)

If you have questions about the new law, below is a link to the ratified bill (since the General Assembly Website does not yet have the new language posted in the General Statutes):

<http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H278v4.pdf>