

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 513

Short Title: Real Property/Technical Corrections. (Public)

Sponsors: Representatives Bryan and Stevens (Primary Sponsors).

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

Referred to: Judiciary IV.

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CONFORMING
CHANGES TO THE GENERAL STATUTES CONCERNING REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-36.10(c) reads as rewritten:

"(c) ~~The~~ Unless the satisfaction expressly states that the underlying obligation secured by the security instrument has been extinguished, the recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation."

SECTION 2. G.S. 47C-3-104 reads as rewritten:

"§ 47C-3-104. Transfer of special declarant rights.

(a) No special declarant right (G.S. 47C-1-103(23)) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. ~~The~~ Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

- (1) A transferor is not relieved of any obligation or liability arising before the ~~transfer, including, but not limited to, liability or obligations relating to warranties.~~ transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of standing to ~~bring~~ maintain an action to enforce any obligation of the transferor.
- (2) If the successor to any special declarant right is an affiliate of a declarant (G.S. 47C-1-103(1)), the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.
- (3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special



1 declarant right by a successor declarant who is not an affiliate of the
2 transferor.

3 (c) ~~Unless otherwise provided in a mortgage instrument or instrument, deed of trust, or~~
4 ~~other agreement creating a security interest, in case of foreclosure of a mortgage, security~~
5 ~~interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale,~~
6 ~~sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership~~
7 ~~proceedings, of any units owned by a declarant, or real estate in a condominium subject to~~
8 ~~development rights, or real estate subject to development rights for a condominium, a person~~
9 ~~acquiring title to all the real estate property being foreclosed or sold, but only upon his request,~~
10 ~~the person's request in an instrument recorded with the register of deeds in every county where~~
11 ~~any portion of the condominium is located, succeeds to all special declarant rights~~
12 ~~(G.S. 47C-1-103(23)) related to that real estate the property held by that declarant, or only to~~
13 ~~any rights reserved in the declaration and held by that declarant to maintain models, sales~~
14 ~~offices and signs. declarant and requested by the person acquiring title. The judgment or~~
15 ~~instrument conveying title shall provide for transfer of only the special declarant rights~~
16 ~~requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this~~
17 ~~subsection shall not be required to contain specific reference to an assignment of special~~
18 ~~declarant rights but shall be deemed to include the special declarant rights as part of the right,~~
19 ~~title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.~~

20 (d) ~~Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or~~
21 ~~sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a~~
22 ~~condominium owned by a declarant the declarant ceases to have any special declarant~~
23 ~~rights. foreclosure of a security interest, sale by a trustee under an agreement creating a security~~
24 ~~interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all~~
25 ~~units and other real estate in a condominium owned by a declarant, the declarant ceases to have~~
26 ~~any special declarant rights and the period of declarant control (G.S. 47C-3-103(d)) terminates~~
27 ~~unless either of the following applies:~~

28 (1) ~~The judgment or instrument conveying title provides for transfer of all~~
29 ~~special declarant rights held by that declarant to a successor declarant.~~

30 (2) ~~The declarant transferred special declarant rights related to the appointment~~
31 ~~of executive board members to another person pursuant to this section prior~~
32 ~~to the foreclosure or sale.~~

33 (e) The liabilities and obligations of persons who succeed to special declarant rights are
34 as follows:

35 (1) A successor to any special declarant right who is an affiliate of a declarant is
36 subject to all obligations and liabilities imposed on the transferor ~~related to~~
37 ~~the condominium by this Chapter or by the declaration.~~

38 (2) ~~A successor to any special declarant right, other than a successor described~~
39 ~~in paragraphs (3) and (4) who is not an affiliate of a declarant, is subject to~~
40 ~~all obligations and liabilities. Unless otherwise specified by the declaration as~~
41 ~~to the holder of a mortgage instrument, deed of trust, or other agreement~~
42 ~~creating a security interest, in case of foreclosure of a security interest, sale~~
43 ~~by a trustee under an agreement creating a security interest, tax sale, judicial~~
44 ~~sale, or sale under Bankruptcy Code or receivership proceedings, a successor~~
45 ~~to any special declarant right who is not an affiliate of a declarant, other than~~
46 ~~a successor described in subdivision (3) or (4) of this subsection, is subject~~
47 ~~to the obligations and liabilities expressly imposed by this Chapter or the~~
48 ~~declaration:~~

49 a. On a declarant which relate to ~~his~~ the successor's exercise or
50 nonexercise of special declarant rights; or

- 1 b. On ~~his~~the declarant's transferor, other ~~than~~than any of the
2 following:
- 3 (i) 1. Misrepresentations by the transferor or any prior
4 declarant; declarant.
- 5 (ii) 2. Warranty obligations on improvements made by the
6 transferor or any previous declarant, or made before the
7 condominium was ~~created~~; created.
- 8 (iii) 3. Breach of any fiduciary obligation by the transferor or any
9 previous declarant or ~~his~~the declarant's appointees to the
10 executive ~~board~~; or board.
- 11 (iv) 4. Any liability or obligation imposed on the transferor or any
12 previous declarant as a result of the transferor's acts or
13 omissions after the transfer.
- 14 5. Obligations and liabilities arising out of contractual
15 agreements between the transferor or any previous declarant
16 and third parties other than those contained in the declaration.
- 17 (3) A successor to only a right reserved in the declaration to maintain models,
18 management offices, sales offices, and signs advertising the condominium
19 (G.S. 47C-2-115), if ~~he~~the successor is not an affiliate of a declarant, may
20 not exercise any other special declarant right, and is not subject to any
21 liability or obligation as a declarant, except the obligation to provide a public
22 offering statement, and any liability arising as a result thereof.
- 23 (4) A successor to all special declarant rights held by ~~his~~a transferor who is not
24 an affiliate of that declarant and who succeeded to those rights pursuant to a
25 deed or other instrument of conveyance in lieu of foreclosure or a judgment
26 or instrument conveying title to units under subsection ~~(e)~~(c) of this section,
27 may declare ~~his intention~~ in a recorded instrument the intention to hold those
28 rights solely for transfer to another person. Thereafter, until transferring all
29 special declarant rights to any person acquiring title to any unit owned by the
30 successor, or until recording an instrument permitting exercise of all those
31 ~~rights~~rights, that successor may not exercise any of those rights other than
32 the right held by ~~his~~the successor's transferor to control the executive board
33 in accordance with the provisions of G.S. 47C-3-103(d) for the duration of
34 any period of declarant control, and any attempted exercise of those rights is
35 void. So long as a successor declarant ~~may~~does not have the right to
36 exercise special declarant rights under this subsection, ~~he~~the successor
37 declarant is not subject to any liability or obligation as a declarant other than
38 liability for ~~his~~the successor declarant's acts and omissions under
39 G.S. 47C-3-103(d).
- 40 (f) Nothing in this section subjects any successor to a special declarant right to any
41 claims against, or other obligations of, a transferor declarant other than claims and obligations
42 expressly arising under this Chapter or the declaration.
- 43 (g) For the purposes of this section, "assignment of declarant rights" shall include any
44 assignment by the declarant of special declarant rights to a person, including, without
45 limitation, an assignment pursuant to this section."
- 46 **SECTION 3.** This act is effective when it becomes law.