

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 882
Committee Substitute Favorable 6/24/15

Short Title: Comm. Mgr. Licensing & Planned Comm. Act Chgs. (Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE PLANNED COMMUNITY ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Article 2 of Chapter 47F of the General Statutes is amended by
5 adding the following new section to read:

6 **"§ 47F-2-105. Contents of the declaration.**

7 (a) The declaration for a planned community shall contain all of the following:

8 (1) The name of the planned community and the association and a statement that
9 the community is a planned community.

10 (2) The name of every county in which any portion of the planned community is
11 situated.

12 (3) A legal description of the real estate included in the planned community.

13 (4) A statement of the maximum number of lots that the declarant reserves the
14 right to create.

15 (5) A description of the boundaries of each lot created by the declaration,
16 including the lot's identifying number.

17 (6) A description of any limited common elements and any real estate that is or
18 must become a common element.

19 (7) A description of any development rights and other special declarant rights
20 reserved by the declarant, together with a legal description of the real estate
21 to which each of those rights applies and a time limit within which each of
22 those rights must be exercised.

23 (8) If any development right may be exercised with respect to different parcels
24 of real estate at different times, a statement to that effect together with all of
25 the following:

26 a. A statement fixing the boundaries of the affected parcels and the
27 order in which the affected parcels will be subjected to the exercise
28 of each development right or an affirmative statement that no
29 assurances are made by the declarant with respect to the exercise of
30 development rights.

31 b. A statement as to whether, if a development right is exercised in any
32 portion of the real estate subject to that development right, the
33 development right will be reserved and applied to the remaining
34 portions of the subject real estate.

35 (9) All conditions or limitations under which the rights described in subdivision
36 (7) of this subsection may be exercised or will lapse.



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- 1 (10) The allocation to each lot of the allocated common expense and votes.
2 (11) The recording information for all easements and licenses (i) appurtenant to
3 or included in the planned community or (ii) to which any portion of the
4 planned community may become subject by virtue of a reservation in the
5 declaration.
6 (12) Any authorization that entitles the association to establish and enforce
7 construction and design criteria and aesthetic standards.
8 (13) If an authorization is included pursuant to subdivision (12) of this
9 subsection, a provision allowing for members to adopt (i) rules for the
10 establishment and enforcement of construction and design criteria and
11 aesthetic standards and (ii) procedures for enforcement of those criteria and
12 standards, including approval of applications, establishment of a reasonable
13 time for review of applications, and the consequences of the association's
14 failure to timely respond.
15 (14) Any other matters the declarant deems appropriate and that are consistent
16 with this Chapter."

17 **SECTION 2.** G.S. 47F-2-117 reads as rewritten:

18 **"§ 47F-2-117. Amendment of declaration.**

19 (a) Except in cases of amendments that may be executed by a declarant under the terms
20 of the declaration or by certain lot owners under G.S. 47F-2-118(b), and notwithstanding the
21 content of the declaration and any intention of the declarant, the declaration may be amended
22 only by affirmative vote or written agreement signed by lot owners of lots to which at least
23 sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority
24 the declaration ~~specifiesspecifies~~, but not exceeding eighty percent (80%), or by the declarant if
25 necessary for the exercise of any development right. The declaration may specify a smaller
26 number only if all of the lots are restricted exclusively to nonresidential use. To the extent the
27 procedures and requirements for amending the declaration conflict with the provisions of this
28 section, this section shall control.

29 (b) No action to challenge the validity of an amendment adopted pursuant to this
30 section may be brought more than ~~one year~~ three years after the amendment is recorded.

31 (c) Every amendment to the declaration shall be recorded in every county in which any
32 portion of the planned community is located and is effective only upon recordation.

33 (d) Any amendment passed pursuant to the provisions of this section or the procedures
34 provided for in the declaration are presumed valid and ~~enforceable~~ enforceable, unless the
35 amendment conflicts with the provisions of this Chapter or violates G.S. 47F-1-104(a) or
36 G.S. 47F-2-103(c).

37 "

38 **SECTION 3.** G.S. 47F-3-118 reads as rewritten:

39 **"§ 47F-3-118. Association records.**

40 (a) The association shall ~~keep financial records sufficiently detailed to enable the~~
41 ~~association to comply with this Chapter. All financial and other records, including records of~~
42 ~~meetings of the association and executive board, shall be made reasonably available for~~
43 ~~examination by any lot owner and the lot owner's authorized agents as required in the bylaws~~
44 ~~and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be~~
45 ~~maintained, the association shall keep accurate records of all cash receipts and expenditures and~~
46 ~~all assets and liabilities. In addition to any specific information that is required by the bylaws to~~
47 ~~be assembled and reported to the lot owners at specified times, the association shall make an~~
48 ~~annual income and expense statement and balance sheet available to all lot owners at no charge~~
49 ~~and within 75 days after the close of the fiscal year to which the information relates.~~
50 ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's~~
51 ~~books and records for the current or immediately preceding fiscal year may be required by a~~

1 ~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot~~
2 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
3 ~~duly called for that purpose retain all of the following:~~

- 4 (1) Detailed records of receipts and expenditures affecting the operation and
5 administration of the association and other appropriate accounting records.
- 6 (2) Minutes of all meetings of the lot owners and executive board, other than
7 executive sessions, a record of all actions taken by the lot owners or
8 executive board without a meeting, and a record of all actions taken by a
9 committee in place of the executive board on behalf of the association.
- 10 (3) The names of lot owners in a form that permits preparation of a list of the
11 names of all owners and the addresses at which the association
12 communicates with them, in alphabetical order showing the number of votes
13 each owner is entitled to cast.
- 14 (4) The association's original or restated organizational documents, the bylaws
15 and all amendments to them, and all rules of the association currently in
16 effect.
- 17 (5) All financial statements, audits, and tax returns of the association for the
18 preceding three years.
- 19 (6) A list of the names and addresses of the association's current executive board
20 members and officers.
- 21 (7) All financial and other records sufficiently detailed so as to enable the
22 association or lot owner to comply with a required disclosure statement.
- 23 (8) Copies of current contracts to which the association is a party.
- 24 (9) All records of executive board or committee actions to approve or deny
25 requests for design or architectural approval from unit owners.
- 26 (10) All ballots, proxies, and other records related to voting by unit owners for a
27 period of one year following the election, action, or vote to which they
28 relate.

29 (b) Subject to the provisions of subsections (c) and (d) of this section, all records
30 retained by the association, including those records required pursuant to Chapter 55A of the
31 General Statutes, shall be made available for inspection and copying by a lot owner or the lot
32 owner's authorized agent. For purposes of this section, copying of records may be done by
33 photocopying or other means, including the receipt of copies through an electronic
34 transmission, if available, upon request by the lot owner. An association is not obligated to
35 compile or synthesize information. Information provided pursuant to this section shall not be
36 used for commercial purposes. The association may impose a reasonable charge, covering the
37 costs of labor and material, for producing for inspection or copying any records provided to the
38 lot owner. The charge shall not exceed the estimated cost of production or reproduction of the
39 records.

40 (c) Upon failure of the association to provide access to records requested pursuant to
41 this section, the lot owner may obtain relief pursuant to G.S. 55A-16-04. A request made
42 pursuant to this section shall be subject to all of the following requirements:

- 43 (1) Access to the records shall be during reasonable business hours or at a
44 mutually convenient time and location.
- 45 (2) The requestor shall provide at least 10 days' written notice that reasonably
46 identifies the specific records requested.

47 (d) Records retained by an association may be withheld from inspection and copying to
48 the extent the documents contain any of the following:

- 49 (1) Personnel, salary, and medical records relating to specific individuals.
- 50 (2) Contracts, leases, and other commercial transactions to purchase or provide
51 goods or services, currently being negotiated.

- 1 (3) Information regarding existing or reasonably anticipated litigation or
2 mediation, arbitration, or administrative proceedings.
3 (4) Information regarding existing or reasonably anticipated federal, State, or
4 local administrative or other formal proceedings before a governmental
5 tribunal for enforcement of the declaration, bylaws, or rules.
6 (5) Communications with the association's attorney that are otherwise protected
7 by the attorney-client privilege or the attorney work product doctrine.
8 (6) Information that, if disclosed, would violate a State or federal law.
9 (7) Records of an executive session of the executive board.
10 (8) Files pertaining to an individual lot owner other than those of the requesting
11 owner.

12 (e) In addition to any specific information that is required by the bylaws to be
13 assembled and reported to the lot owners at specified times, the association shall make an
14 annual income and expense statement and balance sheet available to all lot owners at no charge
15 and within 75 days after the close of the fiscal year to which the information relates.

16 (f) Notwithstanding the bylaws of the association, a more extensive compilation,
17 review, or audit of the association's books and records for the current or immediately preceding
18 fiscal year may be required by a vote of the majority of the executive board or by the
19 affirmative vote of a majority of the lot owners present and voting in person or by proxy at an
20 annual meeting or any special meeting duly called for that purpose.

21 ~~(b)~~(g) The association, upon written request, shall furnish to a lot owner or the lot owner's
22 authorized agents a statement setting forth the amount of unpaid assessments and other charges
23 against a lot. The statement shall be furnished within 10 business days after receipt of the
24 request and is binding on the association, the executive board, and every lot owner.

25 ~~(e)~~(h) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no
26 financial payments, including payments made in the form of goods and services, may be made
27 to any officer or member of the association's executive board or to a business, business
28 associate, or relative of an officer or member of the executive board, except as expressly
29 provided for in the bylaws or in payments for services or expenses paid on behalf of the
30 association which are approved in advance by the executive board."

31 **SECTION 4.** This act becomes effective July 1, 2016. Nothing in this act shall be
32 construed as being applicable to or affecting any pending litigation.