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HOUSE BILL DRH10255-MQ-79 (03/15)

Short Title: Planned Community Act Changes. (Public)

Sponsors: Representatives Jordan and Blust (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PLANNED COMMUNITY ACT AND THE CONDOMINIUM
3 ACT FOR THE PURPOSE OF CREATING CONSISTENCY AND ENHANCING
4 CONSUMER PROTECTIONS.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. AMENDMENTS TO PLANNED COMMUNITY ACT**

8 **SECTION 1.1.** Article 2 of Chapter 47F of the General Statutes is amended by
9 adding the following new sections to read:

10 "**§ 47F-2-105. Contents of the declaration.**

11 The declaration for a planned community shall contain all of the following:

- 12 (1) The name of the common interest community and association and a
13 statement that the common interest community is a planned community.
14 (2) The name of every county in which any portion of the common interest
15 community is situated.
16 (3) A legal description of the real estate included in the common interest
17 community.
18 (4) A statement of the maximum number of lots that the declarant reserves the
19 right to create.
20 (5) A description of the boundaries of each lot created by the declaration,
21 including the lot's identifying number.
22 (6) A description of any limited common elements along with a list of real
23 property that is or must become a common element.
24 (7) A description of any development rights and other special declarant rights
25 reserved by the declarant, together with a legal description of the real
26 property to which each of those rights applies and a time limit within which
27 each of those rights must be exercised.
28 (8) If any development right may be exercised with respect to different parcels
29 of real estate at different times, a statement to that effect together with all of
30 the following:
31 a. A statement fixing the boundaries of the affected parcels and the
32 order in which the affected parcels will be subjected to the exercise
33 of each development right or an affirmative statement that no
34 assurances are made by the declarant with respect to the exercise of
35 development rights.



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1 b. If a development right is exercised in any portion of the real estate
2 subject to that development right, a statement as to whether the
3 development right will be reserved and applied to the remaining
4 portions of the subject real estate.

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

7 (10) The allocation to each lot of the allocated common interest expense and
8 votes as provided for under G.S. 47F-2-106.

9 (11) The recording information for all easements and licenses (i) appurtenant to
10 or included in the common interest community or (ii) to which any portion
11 of the common interest community may become subject by virtue of a
12 reservation in the declaration.

13 (12) Any authorization that entitles the association to establish and enforce
14 construction and design criteria and aesthetic standards.

15 (13) A provision allowing for members to adopt (i) rules for the establishment
16 and enforcement of construction and design criteria and aesthetic standards
17 and (ii) procedures for enforcement of those criteria and standards, including
18 approval of applications establishment of a reasonable time for review of
19 applications, and the consequences of the association's failure to timely
20 respond.

21 (14) Any other matters the declarant deems appropriate and that are consistent
22 with the provisions of this Chapter.

23 **"§ 47F-2-106. Allocation of common expense liabilities and votes.**

24 (a) The declaration shall allocate the common expense liabilities of the association and
25 a portion of the total association votes to each lot and shall state the formulas used to establish
26 those allocations.

27 (b) A declarant shall not use class voting for the purpose of evading any limitation
28 imposed on declarants by this Chapter. Lots owned by a declarant shall not constitute a class by
29 virtue of their ownership by the declarant.

30 (c) With the exception of minor variations from rounding, the sum of the common
31 expense liabilities allocated to all lots subject to the declaration shall equal one, if stated
32 fractionally, or, if stated as a percentage, one hundred percent (100%)."

33 **SECTION 1.2.** G.S. 47F-2-117 reads as rewritten:

34 **"§ 47F-2-117. Amendment of declaration.**

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

45 "

46 **SECTION 1.3.** G.S. 47F-3-101 reads as rewritten:

47 **"§ 47F-3-101. Organization of owners' association.**

48 A lot owners' association shall be incorporated no later than the date the first lot in the
49 planned community is conveyed. The membership of the association at all times shall consist
50 exclusively of all the lot owners or, following termination of the planned community, of all
51 persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created

1 after the effective date of this Chapter shall be organized as a nonprofit ~~corporation~~corporation
2 or as an unincorporated nonprofit association."

3 **SECTION 1.4.** G.S. 47F-3-102 reads as rewritten:

4 "**§ 47F-3-102. Powers of owners' association.**

5 Unless the articles of incorporation or the declaration expressly provides to the contrary, the
6 association ~~may~~may do all of the following:

- 7 (1) Adopt and amend bylaws and rules and ~~regulations~~regulations.
- 8 (2) Adopt and amend budgets for revenues, expenditures, and reserves and
9 collect assessments for common expenses from lot ~~owners~~owners.
- 10 (3) Hire and discharge managing agents and other employees, agents, and
11 independent ~~contractors~~contractors.
- 12 (4) Institute, defend, or intervene in litigation or administrative proceedings on
13 matters affecting the planned ~~community~~community.
- 14 (5) Make contracts and incur ~~liabilities~~liabilities.
- 15 (6) Regulate the use, maintenance, repair, replacement, and modification of
16 common ~~elements~~elements.
- 17 (7) Cause additional improvements to be made as a part of the common
18 ~~elements~~elements.
- 19 (8) Acquire, hold, encumber, and convey in its own name any right, title, or
20 interest to real or personal property, provided that common elements may be
21 conveyed or subjected to a security interest only pursuant to ~~G.S.~~
22 ~~47F-3-112~~G.S. 47F-3-112.
- 23 (9) Grant easements, leases, licenses, and concessions through or over the
24 common ~~elements~~elements.
- 25 (10) Impose and receive any payments, fees, or charges for the use, rental, or
26 operation of the common elements other than the limited common elements
27 and for services provided to lot ~~owners~~owners.
- 28 (11) Impose reasonable charges for late payment of assessments, not to exceed
29 the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any
30 assessment installment unpaid and, after notice and an opportunity to be
31 heard, suspend privileges or services provided by the association (except
32 rights of access to lots) during any period that assessments or other amounts
33 due and owing to the association remain unpaid for a period of 30 days or
34 ~~longer~~longer.
- 35 (12) After notice and an opportunity to be heard, impose reasonable fines or
36 suspend privileges or services provided by the association (except rights of
37 access to lots) for reasonable periods for violations of the declaration,
38 bylaws, and rules and regulations of the ~~association~~association.
- 39 (13) Impose reasonable charges in connection with the preparation and
40 recordation of documents, including, without limitation, amendments to the
41 ~~declaration~~declaration, certificates required by G.S. 47F-4-103, or
42 statements of unpaid assessments~~assessments.~~
- 43 (14) Provide for the indemnification of and maintain liability insurance for its
44 officers, executive board, directors, employees, and ~~agents~~agents.
- 45 (15) Assign its right to future income, including the right to receive common
46 expense ~~assessments~~assessments.
- 47 (16) Exercise all other powers that may be exercised in this State by legal entities
48 of the same type as the ~~association~~and association.
- 49 (17) Exercise any other powers necessary and proper for the governance and
50 operation of the association."

51 **SECTION 1.5.** G.S. 47F-3-103 reads as rewritten:

1 **"§ 47F-3-103. Executive board members and officers.**

2 ...
3 (d) ~~The Subject to subsection (d1) of this section, the declaration may provide for a~~
4 ~~period of declarant control of the association, during which period a declarant, or persons~~
5 ~~designated by the declarant, may appoint and remove the officers and members of the executive~~
6 ~~board. Regardless of the period provided in the declaration, a period of declarant control~~
7 ~~terminates no later than the earlier of (i) 120 days after conveyance of seventy-five percent~~
8 ~~(75%) of the lots (including lots which may be created pursuant to special declarant rights) to~~
9 ~~lot owners other than a declarant, (ii) two years after all declarants have ceased to offer lots for~~
10 ~~sale in the ordinary course of business, or (iii) two years after any development right to add~~
11 ~~new lots was last exercised. A declarant may voluntarily surrender the right to appoint and~~
12 ~~remove officers and members of the executive board before termination of that period, but in~~
13 ~~that event, the declarant may require, for the duration of the period of declarant control, that~~
14 ~~specified actions of the association or executive board, as described in a recorded instrument~~
15 ~~executed by the declarant, be approved by the declarant before they become effective.~~

16 (d1) Not later than 60 days after conveyance of twenty-five percent (25%) of the lots,
17 including lots which may be created pursuant to special declarant rights, to lot owners other
18 than a declarant, at least one member and not less than twenty-five percent (25%) of the
19 members of the executive board shall be elected by lot owners other than a declarant. Not later
20 than 60 days after conveyance of fifty percent (50%) of the lots, including lots which may be
21 created pursuant to special declarant rights, to lot owners other than a declarant, not less than
22 thirty-three percent (33%) of the members of the executive board shall be elected by lot owners
23 other than the declarant.

24 ...
25 (g) 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, shall be made
27 to any officer or member of the executive board, except as expressly provided for in the bylaws
28 or in payments for services or expenses paid on behalf of the association which are approved in
29 advance by the executive board."

30 **SECTION 1.6.** G.S. 47F-3-105 reads as rewritten:

31 **"§ 47F-3-105. Termination of contracts and leases of declarant.**

32 If entered into before the executive board elected by the lot owners pursuant to
33 G.S. 47F-3-103(e) takes office, ~~any contract or lease affecting or related to the planned~~
34 ~~community~~ (i) any management contract, employment contract, or lease of recreational or
35 parking areas or facilities, (ii) any other contract or leases between the association and a
36 declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was
37 unconscionable to the lot owners at the time entered into under the circumstances then
38 prevailing, may be terminated without penalty by the association at any time after the executive
39 board elected by the lot owners pursuant to G.S. 47F-3-103(e) takes office upon not less than
40 90 days' notice to the other party. Notice of the substance of the provisions of this section shall
41 be set out in each contract entered into by or on behalf of the association before the executive
42 board elected by the lot owners takes office. Failure of the contract to contain such a provision
43 shall not affect the rights of the association under this section."

44 **SECTION 1.7.** G.S. 47F-3-108 reads as rewritten:

45 **"§ 47F-3-108. Meetings.**

46 (a) ~~A meeting of the association shall be held at least once each year.~~ An association
47 shall hold a meeting of lot owners at a time, date, and place stated in or fixed in accordance
48 with the bylaws. Special meetings of the association may be called by the president, a majority
49 of the executive board, or by lot owners having ten percent (10%), or any lower percentage
50 specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days
51 in advance of any meeting, the secretary or other officer specified in the bylaws shall cause

1 notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each
2 lot or to any other mailing address designated in writing by the lot owner, or sent by electronic
3 means, including by electronic mail over the Internet, to an electronic mailing address
4 designated in writing by the lot owner. If the association does not notify the lot owners of a
5 special meeting within 30 days after the requisite number or percentage of lot owners request a
6 special meeting pursuant to this subsection, then the requesting lot owners may directly notify
7 all of the lot owners. The notice of any meeting shall state the time and place of the meeting
8 and the items on the agenda, including the general nature of any proposed amendment to the
9 declaration or bylaws, any budget changes, and any proposal to remove a director or officer.
10 Only matters described in a meeting notice may be considered at a special meeting.

11"

12 **SECTION 1.8.** G.S. 47F-3-111 reads as rewritten:

13 "**§ 47F-3-111. Tort and contract liability.**

14 ...

15 (b1) If an action is brought against the association for a claim which occurred during any
16 period of declarant control, and if the association gives the declarant that controlled the
17 association when the claim occurred reasonable notice of and an opportunity to defend against
18 the action, the declarant in control when the claim occurred shall be liable to the association for
19 all of the following:

20 (1) All tort losses incurred by the association that are not covered by an
21 insurance policy held by the association.

22 (2) All losses which the association would not have incurred but for a breach of
23 contract.

24 Nothing in this subsection shall be construed to impose strict or absolute liability upon the
25 declarant for claims occurring during the period of declarant control.

26 (c) In any situation where the declarant is liable to the association under this section,
27 the declarant shall also be liable for all litigation expenses, including reasonable attorneys' fees,
28 incurred by the association. Any statute of limitation affecting the association's right of action
29 under this section is tolled until the period of declarant control terminates. A lot owner is not
30 precluded from bringing an action contemplated by this section because the person is a lot
31 owner or a member of the association."

32 **SECTION 1.9.** G.S. 47F-3-114 reads as rewritten:

33 "**§ 47F-3-114. Surplus funds.**

34 Unless otherwise provided in the declaration, any surplus funds of the association
35 remaining after payment of or provision for common ~~expenses, the funding of a reasonable~~
36 ~~operating expense surplus, expenses~~ and any prepayment of reserves shall be paid to the lot
37 owners in proportion to their common expense liabilities or credited to them to reduce their
38 future common expense assessments."

39 **SECTION 1.10.** G.S. 47F-3-116 reads as rewritten:

40 "**§ 47F-3-116. Lien for sums due the association; enforcement.**

41 ...

42 (f) Except as provided in subsection (h) of this section, the association, acting through
43 the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust
44 on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General
45 Statutes, if the assessment remains unpaid for 90 days or ~~more-more,~~ provided that the claim of
46 lien is against a lot that is not the primary residence of the owner. The association shall not
47 foreclose the claim of lien unless the executive board votes to commence the proceeding
48 against the specific lot.

49 The following provisions and procedures shall be applicable to and complied with in every
50 nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures

1 shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A
2 of Chapter 45 of the General Statutes:

- 3 ~~(1) The association shall be deemed to have a power of sale for purposes of~~
4 ~~enforcement of its claim of lien.~~

5 ...

6 (h) A claim of lien securing a debt consisting solely of fines imposed by the association,
7 interest on unpaid fines, or attorneys' fees incurred by the association solely associated with
8 fines imposed by the association may only be enforced by judicial foreclosure, as provided in
9 Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy,
10 charge, or attempt to collect a service, collection, consulting, or administration fee from any lot
11 owner unless the fee is expressly allowed in the declaration, and any claim of lien securing a
12 debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in
13 Article 29A of Chapter 1 of the General Statutes. A claim of lien against a lot that is the
14 primary residence of the owner may only be foreclosed by judicial foreclosure as provided in
15 Part 1 of Article 29A of Chapter 1 of the General Statutes.

16"

17 **SECTION 1.11.** G.S. 47F-3-118 reads as rewritten:

18 **"§ 47F-3-118. Association records.**

19 (a) ~~The association shall keep financial records sufficiently detailed to enable the~~
20 ~~association to comply with this Chapter. All financial and other records, including records of~~
21 ~~meetings of the association and executive board, shall be made reasonably available for~~
22 ~~examination by any lot owner and the lot owner's authorized agents as required in the bylaws~~
23 ~~and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be~~
24 ~~maintained, the association shall keep accurate records of all cash receipts and expenditures and~~
25 ~~all assets and liabilities. retain all of the following:~~

- 26 (1) Detailed records of receipts and expenditures affecting the operation and
27 administration of the association and other appropriate accounting records.
28 (2) Minutes of all meetings of its lot owners and executive board, including
29 executive sessions, a record of all actions taken by the lot owners or
30 executive board without a meeting, and a record of all actions taken by a
31 committee in place of the executive board on behalf of the association.
32 (3) The names of lot owners in a form that permits preparation of a list of the
33 names of all lot owners and the addresses at which the association
34 communicates with them, in alphabetical order showing the number of votes
35 each owner is entitled to cast.
36 (4) The association's original or amended organizational documents, bylaws and
37 all amendments to them, and all rules currently in effect.
38 (5) All financial statements and tax returns of the association for the past three
39 years.
40 (6) A list of the names and addresses of its current executive board members
41 and officers.
42 (7) The most recent annual income and expense statement and balance sheet as
43 required by subsection (a1) of this section.
44 (8) Financial and other records sufficiently detailed to enable the association to
45 comply with other requirements of law.
46 (9) Copies of current contracts to which it is a party.
47 (10) Records of executive board or committee actions to approve or deny any
48 request for design or architectural approval from lot owners.
49 (11) Ballots, proxies, and other records related to voting by lot owners for one
50 year after the election, action, or vote to which they relate.

1 (a1) In addition to any specific information that is required by the bylaws to be
2 assembled and reported to the lot owners at specified times, the association shall make an
3 annual income and expense statement and balance sheet available to all lot owners at no charge
4 and within 75 days after the close of the fiscal year to which the information relates.
5 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's
6 books and records for the current or immediately preceding fiscal year may be required by a
7 vote of the majority of the executive board or by the affirmative vote of a majority of the lot
8 owners present and voting in person or by proxy at any annual meeting or any special meeting
9 duly called for that purpose.

10 ...

11 (d) Subject to subsections (e) and (f) of this section, all records retained by an
12 association must be available for examination and copying by a lot owner or the owner's
13 authorized agent as follows:

14 (1) During reasonable business hours or at a mutually convenient time and
15 location.

16 (2) Upon 15 days' notice in a request reasonably identifying the specific records
17 of the association requested.

18 (e) Records retained by an association may be withheld from inspection and copying to
19 the extent that they concern one of the following matters:

20 (1) Personnel, salary, and medical records relating to specific individuals.

21 (2) Contracts, leases, and other commercial transactions to purchase or provide
22 goods or services currently being negotiated.

23 (3) Existing or potential litigation or mediation, arbitration, or administrative
24 proceedings.

25 (4) Existing or potential matters involving federal, State, or local administrative
26 or other formal proceedings before a governmental tribunal for enforcement
27 of the declaration, bylaws, or rules and regulations.

28 (5) Communications with the association's attorney which are otherwise
29 protected by the attorney-client privilege or the attorney work product
30 doctrine.

31 (6) Information the disclosure of which would violate law other than this act.

32 (7) Records of an executive session of the executive board.

33 (8) Individual lot files other than those of the requesting owner.

34 (f) An association may charge a reasonable fee for providing copies of any records
35 under this section and for supervising the lot owner's inspection.

36 (g) A right to copy records under this section includes the right to receive copies by
37 photocopying or other means, including copies through an electronic transmission if available
38 upon request by the lot owner.

39 (h) An association is not obligated to compile or synthesize information.

40 (i) Information provided pursuant to this section shall not be used for commercial
41 purposes."

42 **SECTION 1.12.** Article 3 of Chapter 47F of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 47F-3-120.1. Alternative dispute resolution allowed.**

45 Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or
46 rules and regulations may agree to resolve the dispute by any form of binding or nonbinding
47 alternative dispute resolution, except that a declarant may agree with the association to do so
48 only after the period of declarant control has expired. Parties electing to use alternative dispute
49 resolution pursuant to this section shall use only mediators certified by the Dispute Resolution
50 Commission. An agreement to submit to any form of binding alternative dispute resolution
51 must be in a record authenticated by the parties."

1 **SECTION 1.13.** Chapter 47F of the General Statutes is amended by adding a new
2 Article to read:

3 "Article 4.

4 "Protection of Purchasers.

5 **"§ 47F-4-101. Applicability of Article; waiver.**

6 (a) This Article applies to the disposition of all lots that are part of a planned
7 community subject to this Chapter, except as provided in subsection (b) of this section or as
8 modified or waived by agreement of purchasers of lots in a planned community in which all
9 lots are restricted to nonresidential use.

10 (b) No disclosure certificate, as provided for in G.S. 47F-4-103, need be prepared or
11 delivered in the case of a disposition which is classified as one or more of the following:

12 (1) Gratuitous.

13 (2) Pursuant to court order.

14 (3) By a government or governmental agency.

15 (4) By foreclosure or deed in lieu of foreclosure.

16 (5) To a dealer.

17 (6) Subject to cancellation at any time and for any reason by the purchaser
18 without penalty.

19 (7) Property restricted to nonresidential purposes.

20 **"§ 47F-4-102. Purchaser's right to cancel.**

21 (a) A person required to deliver a disclosure certificate pursuant to G.S. 47F-4-103 shall
22 provide a purchaser with a copy of the certificate before conveyance of the lot, and not later
23 than the date of any contract of sale. Unless a purchaser is given the disclosure certificate more
24 than five days before execution of a contract for the purchase of the lot, the purchase contract is
25 voidable by the purchaser until the certificate has been provided and for five days thereafter or
26 until conveyance, whichever occurs first.

27 (b) A purchaser who elects to cancel a contract pursuant to subsection (a) of this section
28 may do so by hand-delivering notice to the seller or by mailing notice by prepaid United States
29 mail to the seller or to the seller's agent. A purchaser may cancel without penalty, and all
30 payments made by the purchaser before cancellation shall be refunded promptly.

31 **"§ 47F-4-103. Disclosure to be made to purchasers.**

32 (a) Unless exempt under G.S. 47F-4-101(b), a seller of lot that is part of a planned
33 community shall furnish to a purchaser before the earlier of conveyance or transfer of the right
34 to possession of the lot, a copy of the declaration, other than any plats and plans, the bylaws,
35 the rules or regulations of the association, and a certificate containing all of the following:

36 (1) A statement disclosing the effect on the proposed disposition of any right of
37 first refusal or other restraint on the free alienability of the lot held by the
38 association.

39 (2) A statement setting forth the amount of the periodic common expense
40 assessment and any unpaid common expense or special assessment currently
41 due and payable from the owner who is selling the lot.

42 (3) A statement of any other fees payable by the owner who is selling the lot.

43 (4) A statement of any capital expenditures approved by the association for the
44 current and succeeding fiscal years.

45 (5) A statement of the amount of any reserves for capital expenditures and of
46 any portions of those reserves designated by the association for any specified
47 projects.

48 (6) The most recent regularly prepared balance sheet and income and expense
49 statement, if any, of the association.

50 (7) The current operating budget of the association.

- 1 (8) A statement of any unsatisfied judgments against the association and the
2 status of any pending suits in which the association is a defendant.
- 3 (9) A statement describing any insurance coverage provided for the benefit of
4 lot owners.
- 5 (10) A statement as to whether the executive board has given or received written
6 notice that any existing uses, occupancies, alterations, or improvements in or
7 to the lot or to the limited common elements assigned thereto violate any
8 provision of the declaration.
- 9 (11) A statement as to whether the executive board has received written notice
10 from a governmental agency of any violation of environmental, health, or
11 building codes with respect to the lot, the limited common elements assigned
12 thereto, or any other portion of the planned community which has not been
13 cured.
- 14 (12) A statement of the remaining term of any leasehold estate affecting the
15 planned community and the provisions governing any extension or renewal
16 thereof.
- 17 (13) A statement of any restrictions in the declaration affecting the amount that
18 may be received by a lot owner upon sale, condemnation, casualty loss to the
19 lot or the planned community, or termination of the planned community.
- 20 (14) In a cooperative, an accountant's statement, if any was prepared, as to the
21 deductibility for federal income tax purposes by the lot owner of real estate
22 taxes and interest paid by the association.
- 23 (15) A statement describing any pending sale or encumbrance of common
24 elements.
- 25 (16) A statement disclosing the effect on the lot to be conveyed of any
26 restrictions on the owner's right to use or occupy the lot or to lease the lot to
27 another person.

28 (b) The association, within 10 days after a request by a lot owner, shall furnish a
29 certificate containing the information and copies of all documents necessary to enable the lot
30 owner to comply with this section. A lot owner providing a certificate pursuant to subsection
31 (a) of this section is not liable to the purchaser for any erroneous information provided by the
32 association and included in the certificate.

33 (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount
34 set forth in the certificate prepared by the association. A lot owner is not liable to a purchaser
35 for the failure or delay of the association to provide the certificate in a timely manner."

36 **SECTION 1.14.** This Part is effective when it becomes law and applies to all (i)
37 planned communities created in this State on or after that date, which contain more than 20
38 residential lots and (ii) planned communities created in this State before that date, which
39 contain more than 20 residential lots, except that the act applies only with respect to events and
40 circumstances occurring on or after the effective date of this act, and this act does not invalidate
41 existing provisions of the declaration, bylaws, or plats or plans of those planned communities.
42 The declaration, bylaws, or plats and plans of any planned community in this State created
43 before the effective date of this act may be amended to achieve any result permitted by this act,
44 regardless of what applicable law provided before that date.

45 **PART II. AMENDMENTS TO THE CONDOMINIUM ACT**

46 **SECTION 2.1.** G.S. 47C-3-103 reads as rewritten:

47 **"§ 47C-3-103. Executive board members and officers.**

48 ...

49 (h) In addition to the limitations of Article 8 of Chapter 55A of the General Statutes, no
50 financial payments, including payments made in the form of goods and services, shall be made
51

1 to any officer or member of the executive board, or to a business, business associate, or relative
2 of an officer or member of the executive board, except as expressly provided for in the bylaws
3 or in payments for services or expenses paid on behalf of the association which are approved in
4 advance by the executive board."

5 SECTION 2.2. G.S. 47C-3-108 reads as rewritten:

6 "§ 47C-3-108. Meetings.

7 (a) ~~A meeting of the association shall be held at least once each year.~~ An association
8 shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in
9 accordance with the bylaws. Special meetings of the association may be called by the president,
10 a majority of the executive board, or by unit owners having twenty percent (20%) or any lower
11 percentage specified in the bylaws of the votes in the association. Not less than 10 nor more
12 than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws
13 shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
14 address of each unit or to any other mailing address designated in writing by the unit owner, or
15 sent by electronic means, including by electronic mail over the Internet, to an electronic
16 mailing address designated in writing by the unit owner. If the association does not notify the
17 unit owners of a special meeting within 30 days after the requisite number or percentage of unit
18 owners request a special meeting pursuant to this subsection, then the requesting unit owners
19 may directly notify all of the unit owners. The notice of any meeting must state the time and
20 place of the meeting and the items on the agenda, including the general nature of any proposed
21 amendment to the declaration or bylaws, any budget changes, and any proposal to remove a
22 director or officer. Only matters described in a meeting notice may be considered at a special
23 meeting.

24 (b) ~~Meetings of the executive board shall be held as provided in the bylaws. At regular~~
25 ~~intervals, the executive board meeting shall provide unit owners an opportunity to attend a~~
26 ~~portion of an executive board meeting and to speak to the executive board about their issues~~
27 ~~and concerns. The executive board may place reasonable restrictions on the number of persons~~
28 ~~who speak on each side of an issue and may place reasonable time restrictions on persons who~~
29 ~~speak.~~

30 (c) Except as otherwise provided for in the bylaws, meetings of the association and
31 executive board shall be conducted in accordance with the most recent edition of Robert's Rules
32 of Order Newly Revised. Unless the declaration or bylaws otherwise provide, meetings of the
33 association and the executive board may be conducted by telephonic, video, or other
34 conferencing process if both of the following conditions are met:

35 (1) The meeting notice states the conferencing process to be used and provides
36 information explaining how unit owners may participate in the conference
37 directly or by meeting at a central location or conference connection.

38 (2) The process provides all unit owners the opportunity to hear or perceive the
39 discussion and to comment as provided in subsection (d) of this section.

40 (d) Unit owners shall be given a reasonable opportunity at any meeting, including
41 meetings of the executive board, to comment regarding any matter affecting the condominium
42 or the association.

43 (e) Meetings of the executive board and committees of the association authorized to act
44 for the association shall be open to the unit owners except during executive sessions. The
45 executive board and those committees may hold an executive session only during a regular or
46 special meeting of the board or a committee. No final vote or action may be taken during an
47 executive session. An executive session may be held only for any of the following purposes:

48 (1) To consult with the association's attorney concerning legal matters.

49 (2) To discuss existing or potential litigation or mediation, arbitration, or
50 administrative proceedings.

51 (3) To discuss labor or personnel matters.

1 (4) To discuss contracts, leases, and other commercial transactions to purchase
2 or provide goods or services currently being negotiated, including the review
3 of bids or proposals, if premature general knowledge of those matters would
4 place the association at a disadvantage.

5 (5) To prevent public knowledge of the matter to be discussed if the executive
6 board or committee determines that public knowledge would violate the
7 privacy of any person.

8 (f) For purposes of this section, a gathering of board members at which the board
9 members do not conduct association business is not a meeting of the executive board. The
10 executive board and its members may not use incidental or social gatherings of board members
11 or any other method to evade the open meeting requirements of this section.

12 (g) During the period of declarant control, the executive board shall meet at least four
13 times a year. At least one of those meetings shall be held at the condominium or at a place
14 convenient to the condominium. After termination of the period of declarant control, all
15 executive board meetings shall be at the condominium or at a place convenient to the
16 condominium unless the unit owners amend the bylaws to vary the location or procedures of
17 those meetings.

18 (h) Unless the meeting is included in a schedule given to the unit owners or the meeting
19 is called to deal with an emergency, the secretary or other officer specified in the bylaws shall
20 give notice of each executive board meeting to each board member and to the unit owners. The
21 notice shall be given not less than 10 days nor more than 60 days before the meeting and shall
22 state the time, date, place, and agenda of the meeting.

23 (i) If any materials are distributed to the executive board before the meeting, the
24 executive board at the same time shall make copies of those materials reasonably available to
25 unit owners, except that the board need not make available copies of unapproved minutes or
26 materials that are to be considered in executive session.

27 (j) Instead of meeting, the executive board may act by unanimous consent as
28 documented in a record authenticated by all its members. The secretary promptly shall give
29 notice to all unit owners of any action taken by unanimous consent. After termination of the
30 period of declarant control, the executive board may act by unanimous consent only to
31 undertake ministerial actions or to implement actions previously taken at a meeting of the
32 executive board.

33 (k) Even if an action by the executive board is not in compliance with this section, it is
34 valid unless set aside by a court. A challenge to the validity of an action of the executive board
35 for failure to comply with this section may not be brought more than 60 days after the minutes
36 of the executive board of the meeting at which the action was taken are approved or the record
37 of that action is distributed to unit owners, whichever is later."

38 **SECTION 2.3.** G.S. 47C-3-118 reads as rewritten:

39 "**§ 47C-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 unit owner and the unit owner's authorized agents as required by the~~
44 ~~bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation.~~
45 ~~If the bylaws do not specify particular records to be maintained, the association shall keep~~
46 ~~accurate records of all cash receipts and expenditures and all assets and liabilities.~~retain all of
47 the following:

48 (1) Detailed records of receipts and expenditures affecting the operation and
49 administration of the association and other appropriate accounting records.

50 (2) Minutes of all meetings of its unit owners and executive board, including
51 executive sessions, a record of all actions taken by the unit owners or

1 executive board without a meeting, and a record of all actions taken by a
2 committee in place of the executive board on behalf of the association.

3 (3) The names of unit owners in a form that permits preparation of a list of the
4 names of all unit owners and the addresses at which the association
5 communicates with them in alphabetical order showing the number of votes
6 each owner is entitled to cast.

7 (4) Its original or amended organizational documents, bylaws and all
8 amendments to them, and all rules currently in effect.

9 (5) All financial statements and tax returns of the association for the past three
10 years.

11 (6) A list of the names and addresses of its current executive board members
12 and officers.

13 (7) Its most recent annual income and expense statement and balance sheet as
14 required by subsection (a1) of this section.

15 (8) Financial and other records sufficiently detailed to enable the association to
16 comply with other requirements of law.

17 (9) Copies of current contracts to which it is a party.

18 (10) Records of executive board or committee actions to approve or deny any
19 requests for design or architectural approval from unit owners.

20 (11) Ballots, proxies, and other records related to voting by unit owners for one
21 year after the election, action, or vote to which they relate.

22 (a1) In addition to any specific information that is required by the bylaws to be
23 assembled and reported to the unit owners at specified times, the association shall make an
24 annual income and expense statement and balance sheet available to all unit owners at no
25 charge and within 75 days after the close of the fiscal year to which the information relates.
26 Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's
27 books and records for the current or immediately preceding fiscal year may be required by a
28 vote of the majority of the executive board or by the affirmative vote of a majority of the unit
29 owners present and voting in person or by proxy at any annual meeting or any special meeting
30 duly called for that purpose.

31 ...

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

38 (d) Subject to subsections (e) and (f) of this section, all records retained by an
39 association must be available for examination and copying by a unit owner or the owner's
40 authorized agent as follows:

41 (1) During reasonable business hours or at a mutually convenient time and
42 location.

43 (2) Upon 15 days' notice in a request reasonably identifying the specific records
44 of the association requested.

45 (e) Records retained by an association may be withheld from inspection and copying to
46 the extent that they concern one of the following matters:

47 (1) Personnel, salary, and medical records relating to specific individuals.

48 (2) Contracts, leases, and other commercial transactions to purchase or provide
49 goods or services currently being negotiated.

50 (3) Existing or potential litigation or mediation, arbitration, or administrative
51 proceedings.

- 1 (4) Existing or potential matters involving federal, State, or local administrative
 2 or other formal proceedings before a governmental tribunal for enforcement
 3 of the declaration, bylaws, or rules and regulations.
 4 (5) Communications with the association's attorney which are otherwise
 5 protected by the attorney-client privilege or the attorney work product
 6 doctrine.
 7 (6) Information the disclosure of which would violate law other than this act.
 8 (7) Records of an executive session of the executive board.
 9 (8) Individual unit files other than those of the requesting owner.
 10 (f) An association may charge a reasonable fee for providing copies of any records
 11 under this section and for supervising the unit owner's inspection.
 12 (g) A right to copy records under this section includes the right to receive copies by
 13 photocopying or other means, including copies through an electronic transmission if available
 14 upon request by the unit owner.
 15 (h) An association is not obligated to compile or synthesize information.
 16 (i) Information provided pursuant to this section shall not be used for commercial
 17 purposes."

18 **SECTION 2.4.** Article 3 of Chapter 47C of the General Statutes is amended by
 19 adding a new section to read:

20 **"§ 47C-3-120. Alternative dispute resolution allowed.**

21 Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or
 22 rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding
 23 alternative dispute resolution, except that a declarant may agree with the association to do so
 24 only after the period of declarant control has expired. Parties electing to use alternative dispute
 25 resolution for disputes pursuant to this section shall only use mediators certified by the Dispute
 26 Resolution Commission. An agreement to submit to any form of binding alternative dispute
 27 resolution must be in a record authenticated by the parties."

28 **SECTION 2.5.** G.S. 47C-4-101 reads as rewritten:

29 **"§ 47C-4-101. Applicability; waiver.**

30 ...

31 (b) Neither a public offering statement nor a resale certificate need be prepared or
 32 delivered in the case of a disposition which ~~is~~ is classified as one or more of the following:

- 33 (1) ~~Gratuitous;~~ Gratuitous.
 34 (2) Pursuant to court ~~order;~~ order.
 35 (3) By a government or governmental ~~agency;~~ agency.
 36 (4) By foreclosure or deed in lieu of ~~foreclosure;~~ foreclosure.
 37 (5) To a person in the business of selling real estate who intends to offer those
 38 units to ~~purchasers; or~~ purchasers.
 39 (6) Subject to cancellation at any time for any reason by the purchasers without
 40 penalty.
 41 (7) Property restricted to nonresidential purposes.

42"

43 **SECTION 2.6.** G.S. 47C-4-109 reads as rewritten:

44 **"§ 47C-4-109. Resales of units.**

45 Except in the case of a sale where delivery of a public offering statement is required, or
 46 unless exempt under G.S. 47C-4-101(b), a unit owner shall furnish to a prospective purchaser
 47 before the earlier of conveyance or transfer of the right of possession to the unit, a statement
 48 setting forth the monthly common expense assessment and any other fees payable by unit
 49 owners. copy of the declaration, other than any plats and plans, the bylaws, the rules or
 50 regulations of the association, and a certificate containing all of the following:

- 1 (1) A statement disclosing the effect on the proposed disposition of any right of
2 first refusal or other restraint on the free alienability of the unit held by the
3 association.
- 4 (2) A statement setting forth the amount of the periodic common expense
5 assessment and any unpaid common expense or special assessment currently
6 due and payable from the owner who is selling the unit.
- 7 (3) A statement of any other fees payable by the owner who is selling the unit.
- 8 (4) A statement of any capital expenditures approved by the association for the
9 current and succeeding fiscal years.
- 10 (5) A statement of the amount of any reserves for capital expenditures and of
11 any portions of those reserves designated by the association for any specified
12 projects.
- 13 (6) The most recent regularly prepared balance sheet and income and expense
14 statement, if any, of the association.
- 15 (7) The current operating budget of the association.
- 16 (8) A statement of any unsatisfied judgments against the association and the
17 status of any pending suits in which the association is a defendant.
- 18 (9) A statement describing any insurance coverage provided for the benefit of
19 unit owners.
- 20 (10) A statement as to whether the executive board has given or received written
21 notice that any existing uses, occupancies, alterations, or improvements in or
22 to the unit or to the limited common elements assigned thereto violate any
23 provision of the declaration.
- 24 (11) A statement as to whether the executive board has received written notice
25 from a governmental agency of any violation of environmental, health, or
26 building codes with respect to the unit, the limited common elements
27 assigned thereto, or any other portion of the condominium which has not
28 been cured.
- 29 (12) A statement of the remaining term of any leasehold estate affecting the
30 condominium and the provisions governing any extension or renewal
31 thereof.
- 32 (13) A statement of any restrictions in the declaration affecting the amount that
33 may be received by a unit owner upon sale, condemnation, casualty loss to
34 the unit or the condominium, or termination of the condominium.
- 35 (14) In a cooperative, an accountant's statement, if any was prepared, as to the
36 deductibility for federal income tax purposes by the unit owner of real estate
37 taxes and interest paid by the association.
- 38 (15) A statement describing any pending sale or encumbrance of common
39 elements.
- 40 (16) A statement disclosing the effect on the unit to be conveyed of any
41 restrictions on the owner's right to use or occupy the unit or to lease the unit
42 to another person.
- 43 (b) The association, within 10 days after a request by a unit owner, shall furnish a
44 certificate containing the information and copies of all documents necessary to enable the unit
45 owner to comply with this section. A unit owner providing a certificate pursuant to subsection
46 (a) of this section is not liable to the purchaser for any erroneous information provided by the
47 association and included in the certificate.
- 48 (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount
49 set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser
50 for the failure or delay of the association to provide the certificate in a timely manner, but the

1 purchase contract is voidable by the purchaser until the certificate has been provided and for
2 five days thereafter or until conveyance, whichever occurs first."

3 **SECTION 2.7.** This Part is effective when it becomes law and applies to all (i)
4 condominiums created in this State on or after that date and (ii) condominiums created in this
5 State before that date, except that the act applies only with respect to events and circumstances
6 occurring on or after the effective date of this act and does not invalidate existing provisions of
7 the declaration, bylaws, or plats or plans of those condominiums. The declaration, bylaws, or
8 plats and plans of any condominium created before the effective date of this act may be
9 amended to achieve any result permitted by this act, regardless of what applicable law provided
10 before that date.

11
12 **PART III. GENERAL PROVISIONS**

13 **SECTION 3.1.** The North Carolina Real Estate Commission shall revise the
14 Residential Property Disclosure Statement developed by it pursuant to G.S. 47E-4 to provide a
15 place for disclosure by sellers of the existence of any homeowners association or unit owners'
16 association with responsibility for enforcing rules and regulations relating to the real property
17 and the existence of any restrictive covenants affecting the real property, regardless of whether
18 such restrictive covenants are currently violated by any condition of the real property.

19 **SECTION 3.2.** The Consumer Protection Division of the Department of Justice
20 shall provide general information to and receive complaints from the public regarding the
21 implementation of this act. The Department of Justice shall compile all complaints relating to
22 homeowners association into an annual report. The report shall be published on the
23 Department's Web site.

24 **SECTION 3.3.** If any section or provision of this act is declared unconstitutional or
25 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
26 the part so declared to be unconstitutional or invalid.

27 **SECTION 3.4.** Except as provided in Sections 1.14 and 2.7, this act is effective
28 when it becomes law.