

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

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**HOUSE BILL 806**

Short Title: HOA/Condo Crime & Fidelity Insurance Policies. (Public)

Sponsors: Representatives Saine and Strickland (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Insurance, if favorable, Rules, Calendar, and Operations of the House

April 18, 2019

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOMEOWNERS ASSOCIATIONS, CONDOMINIUM ASSOCIATIONS, AND THEIR MANAGEMENT COMPANIES TO ACQUIRE CRIME AND FIDELITY INSURANCE POLICIES TO PROTECT THE ASSOCIATIONS' MEMBERSHIP FROM LOSS DUE TO THE ILLEGAL CONDUCT OF THE ASSOCIATION, THE EXECUTIVE BOARD AND ITS EMPLOYEES, OR A MANAGEMENT COMPANY, AND TO REQUIRE ANNUAL FINANCIAL AUDITS TO BE PERFORMED BY HOMEOWNERS ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 47C-1-102 reads as rewritten:

**"§ 47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Crime and Fidelity Policy Required), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

...."

**SECTION 2.** Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

**"§ 47C-3-113.1. Crime and fidelity policy required.**

(a) Executive Board Coverage. – Any unit owners' association with annual assessments for common expenses of at least twenty-five thousand dollars (\$25,000) or with twenty-five



1 thousand dollars (\$25,000) or more of total funds invested or on deposit shall obtain and  
2 maintain, to the extent available, a crime and fidelity insurance policy. The crime and fidelity  
3 insurance policy shall insure the unit owners' association against losses resulting from theft or  
4 dishonesty committed by the officers and members of the executive board, members of  
5 association committees, past and present, and persons employed by the unit owners' association.  
6 The crime and fidelity policy shall be written by an insurance company authorized to write a  
7 crime and fidelity policy in the State and shall provide coverage in the amount of one hundred  
8 twenty-five percent (125%) of the total funds on deposit or invested by the executive board plus  
9 one hundred twenty-five percent (125%) of the annual budget of the unit owners' association as  
10 of the last day of the association's last fiscal year, but is not required to be greater than one million  
11 dollars (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of  
12 the unit owners' association.

13 (b) Management Agent or Company Coverage. – Any management agent or company  
14 hired by a unit owners' association shall at all times be covered by a crime and fidelity insurance  
15 policy. For purposes of this section, a management agent or company is any person who, for  
16 compensation or the expectation thereof, performs two or more of the following:

- 17 (1) Acts with the authority of a unit owners' association in its business, legal,  
18 financial, or other transactions with association members and nonmembers.
- 19 (2) Executes the resolutions and decisions of the government of a unit owners'  
20 association or, with the authority of the association, enforces the rights of the  
21 association secured by statute, contract, covenant, rule, or bylaw.
- 22 (3) Collects, disburses, or otherwise exercises dominion or control over money or  
23 other property belonging to a unit owners' association.
- 24 (4) Prepares budgets, financial statements, or other financial reports for a unit  
25 owners' association.
- 26 (5) Negotiates contracts or otherwise coordinates or arranges for services or the  
27 purchase of property and goods for or on behalf of a unit owners' association.
- 28 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)  
29 through (5) of this subsection on behalf of a unit owners' association.

30 The crime and fidelity policy shall provide coverage in the amount of the total annual budgets  
31 of all clients of the management agent or company, but is not required to be greater than two  
32 million dollars (\$2,000,000). The crime and fidelity policy shall be written by an insurance  
33 company authorized to write a crime and fidelity policy in this State and shall cover the unit  
34 owners' association manager and all of the manager's employees and protect all or a portion of  
35 the association funds in the custody of the association manager or association employees acting  
36 under the association manager's supervision.

37 (c) Notice of Inability to Comply. – If the insurance policy described in this section is  
38 not reasonably or commercially available, the association shall promptly each year cause notice  
39 of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners."

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

41 "**§ 47C-3-118. Association records.**

42 (a) The association shall keep financial records sufficiently detailed to enable the  
43 association to comply with this chapter. All financial and other records, including records of  
44 meetings of the association and executive board, shall be made reasonably available for  
45 examination by any unit owner and the unit owner's authorized agents as required by the bylaws  
46 and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the  
47 bylaws do not specify particular records to be maintained, the association shall keep accurate  
48 records of all cash receipts and expenditures and all assets and liabilities. In addition to any  
49 specific information that is required by the bylaws to be assembled and reported to the unit  
50 owners at specified times, the association shall make an annual income and expense statement  
51 and balance sheet available to all unit owners at no charge and within 75 days after the close of

1 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~  
2 ~~compilation, review, or audit of the association's books and records for the current or immediately~~  
3 ~~preceding fiscal year may be required by a vote of the majority of the executive board or by the~~  
4 ~~affirmative vote of a majority of the unit owners present and voting in person or by proxy at any~~  
5 ~~annual meeting or any special meeting duly called for that purpose.~~

6 ...."

7 **SECTION 4.** Article 3 of Chapter 47C of the General Statutes is amended by adding  
8 a new section to read:

9 **"§ 47C-3-118.1. Financial audits.**

10 The executive board shall provide for an annual independent financial audit conducted by a  
11 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the unit  
12 owners' association if the unit owners' association has annual revenues or expenditures or total  
13 account balances of one hundred fifty thousand dollars (\$150,000) or more. The audit shall be  
14 completed no later than one year after the end of the fiscal year of the unit owners' association  
15 and shall be made available upon request to the unit owners within 30 days after its completion."

16 **SECTION 5.** G.S. 47F-1-102 reads as rewritten:

17 **"§ 47F-1-102. Applicability.**

18 ...

19 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104  
20 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),  
21 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through  
22 (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers),  
23 G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments  
24 for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community  
25 privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-113.1 (Crime and Fidelity Policy  
26 Required), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for  
27 assessments), G.S. 47F-3-118 (Association records), G.S. 47F-3-118.1 (Financial Audits), and  
28 G.S. 47F-3-121 (American and State flags and political sign displays), and G.S. 47F-3-104  
29 (Transfer of Special Declarant Rights) apply to all planned communities created in this State  
30 before January 1, 1999, unless the articles of incorporation or the declaration expressly provides  
31 to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned  
32 communities created in this State before January 1, 1999. These sections apply only with respect  
33 to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing  
34 provisions of the declaration, bylaws, or plats and plans of those planned communities.  
35 G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before  
36 January 1, 1999, to the extent necessary in construing any of the preceding sections.

37 ...."

38 **SECTION 6.** Article 3 of Chapter 47F of the General Statutes is amended by adding  
39 a new section to read:

40 **"§ 47F-3-113.1. Crime and fidelity policy required.**

41 (a) Executive Board Coverage. – Any lot owners' association with annual assessments  
42 for common expenses of twenty-five thousand dollars (\$25,000) or with twenty-five thousand  
43 dollars (\$25,000) or more of total funds invested or on deposit shall obtain and maintain, to the  
44 extent available, a crime and fidelity insurance policy. The crime and fidelity insurance policy  
45 shall insure the unit owners' association against losses resulting from theft or dishonesty  
46 committed by the officers and members of the executive board, members of association  
47 committees, past and present, and persons employed by the lot owners' association. The crime  
48 and fidelity policy shall be written by an insurance company authorized to write a crime and  
49 fidelity policy in the State and shall provide coverage in the amount of one hundred twenty-five  
50 percent (125%) of the total funds on deposit or invested by the executive board plus one hundred  
51 twenty-five percent (125%) of the annual budget of the lot owners' association as of the last day

1 of the association's last fiscal year, but is not required to be greater than one million dollars  
2 (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of the lot  
3 owners' association.

4 (b) Management Agent or Company Coverage. – Any management agent or company  
5 hired by a lot owners' association shall at all times be covered by a crime and fidelity insurance  
6 policy. For purposes of this section, a management agent or company is any person who, for  
7 compensation or the expectation thereof, performs two or more of the following:

- 8 (1) Acts with the authority of a lot owners' association in its business, legal,  
9 financial, or other transactions with association members and nonmembers.
- 10 (2) Executes the resolutions and decisions of the government of a lot owners'  
11 association or, with the authority of the association, enforces the rights of the  
12 association secured by statute, contract, covenant, rule, or bylaw.
- 13 (3) Collects, disburses, or otherwise exercises dominion or control over money or  
14 other property belonging to a lot owners' association.
- 15 (4) Prepares budgets, financial statements, or other financial reports for a lot  
16 owners' association.
- 17 (5) Negotiates contracts or otherwise coordinates or arranges for services or the  
18 purchase of property and goods for or on behalf of a lot owners' association.
- 19 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)  
20 through (5) of this subsection on behalf of a lot owners' association.

21 The crime and fidelity policy shall provide coverage in the amount of the total annual budgets  
22 of all clients of the management agent or company, but is not required to be greater than two  
23 million dollars (\$2,000,000). The crime and fidelity policy shall be written by an insurance  
24 company authorized to write a crime and fidelity policy in this State and shall cover the lot  
25 owners' association manager and all of the manager's employees and protect all or a portion of  
26 the association funds in the custody of the association manager or association employees acting  
27 under the association manager's supervision.

28 (c) Notice of Inability to Comply. – If the insurance policy described in this section is  
29 not reasonably or commercially available, the association shall promptly each year cause notice  
30 of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners."

31 **SECTION 7.** G.S. 47F-3-118 reads as rewritten:

32 "**§ 47F-3-118. Association records.**

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

48 ...."

49 **SECTION 8.** Article 3 of Chapter 47F of the General Statutes is amended by adding  
50 a new section to read:

51 "**§ 47F-3-118.1. Financial audits.**

1        The executive board shall provide for an annual independent financial audit conducted by a  
2 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the  
3 association if the owners' association has annual revenues or expenditures or total account  
4 balances of one hundred fifty thousand dollars (\$150,000) or more. The audit shall be completed  
5 no later than one year after the end of the fiscal year of the association and shall be made available  
6 upon request to the lot owners within 30 days after its completion."

7        **SECTION 9.** This act becomes effective January 1, 2020. The audit requirements in  
8 Section 6 and Section 8 apply to fiscal years beginning on or after the effective date of this act.