

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**HOUSE BILL 920
RATIFIED BILL**

AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING
CONDOMINIUMS AND CONDOMINIUM ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-2-109 reads as rewritten:

"§ 47C-2-109. Plats and plans.

(a) The declarant shall file with the register of deeds in each county where the condominium is located the condominium's plat or plan prepared in accordance with this section. The plat or plan shall be considered a part of the declaration but shall be recorded separately, and the declaration shall refer by number to the file where such plat or plan is recorded. ~~Each plat or plan must contain a certification by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes that it contains all of the information required by this section.~~

(b) Each plat or plan or combination thereof must ~~show~~show all of the following:

- (1) The name and a survey or general schematic map of the entire ~~econdominium~~condominium.
 - (2) The location and dimensions of all real estate not subject to development rights or subject only to the development right to withdraw and the location and dimensions of all existing improvements within that real ~~estate~~estate.
 - (3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each ~~parcel~~parcel.
 - (4) The extent of any encroachments by or upon any portion of the ~~econdominium~~condominium.
 - (5) The location and dimensions of all easements having specific location and dimensions and serving or burdening any portion of the ~~econdominium~~condominium.
 - (6) The verified statement of an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes certifying that such plats or plans fully and accurately depict (i) the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, as built; locations and dimensions of the horizontally limiting boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, (ii) the location of any vertically limiting boundaries, with reference to established datum, and (iii) an identifying number for each unit.
- (6a) ~~The certificate by a registered land surveyor licensed under the provisions of Chapter 89C of the General Statutes stating that the plats or plans accurately depict the legal boundaries and the physical location of the units and other improvements relative to those boundaries;~~The certification of a Professional Land Surveyor licensed under the provisions of Chapter 89C of the General Statutes, that the plat conforms to the requirements of subdivisions (1), (2),



(3), (4), (5), (7), (8), and (9) of this subsection. The location and dimensions referred to in these subdivisions shall be expressed in the plat in azimuths or courses and distances. Distances shall be in feet or meters and decimals thereof. Tie lines to an external boundary which is itself located and dimensioned are required for buildings containing or comprising any units that are not coincident with said external boundary. Each vertically limiting unit boundary (commonly known as elevation) shall be expressed in feet or meters and decimals as the distance above the referenced datum. The certification required by this subsection shall also state that the plat meets the requirements of NCAC Title 21, Chapter 56 (Board Rules).

- (7) The locations and dimensions of limited common elements; however, parking spaces and the limited common elements described in subsections 47C-2-102(2) and (4) need not be shown, except for decks, stoops, porches, balconies, and ~~patios;~~patios.
- (8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real ~~estate~~";estate."
- (9) The distance between noncontiguous parcels of real estate comprising the ~~econdominium;~~condominium.
- (10) Any unit in which the declarant has reserved the right to create additional units or common elements.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

(d) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (c) or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(e) In order to be recorded, plats or plans ~~filed shall;~~prepared under subsection (b) of this section shall comply with G.S. 47-30(a) and with either G.S. 47-30(b) or G.S. 47-30(o).

- (1) ~~Be reproducible plats or plans on cloth, linen, film, or other permanent material and be submitted in that form; and~~
- (2) ~~Have an outside marginal size of not more than 21 inches by 30 inches nor less than eight and one half inches by 11 inches, including one and one half inches for binding on the left margin and a one half inch border on each of the other sides. Where size of the buildings or suitable scale to assure legibility require, plats or plans may be placed on two or more sheets with appropriate match lines.~~

(f) The fee for recording each plat or plan sheet submitted shall be as prescribed by G.S. 161-10(a)(3).

(g) The provisions of this Article and of condominium instruments recorded pursuant thereto shall be liberally construed in favor of the valid establishment of a condominium with respect to the submitted property."

SECTION 2. G.S. 47C-2-105 reads as rewritten:

"§ 47C-2-105. Contents of declaration.

- (a) The declaration for a condominium must ~~eontain;~~contain all of the following:
 - (1) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium", and the name of the ~~association;~~association.
 - (2) The name of every county in which any part of the condominium is ~~situated;~~situated.

- (3) A legally sufficient description of the real estate included in the ~~econdominium;~~condominium.
- (4) A statement of the maximum number of units which the declarant reserves the right to ~~ereate;~~create.
- (5) ~~A description (by description, by reference to the plats or plans described in G.S. 47C-2-109) G.S. 47C-2-109, of the boundaries of each unit created by the declaration, including the unit's identifying number;~~number. A declaration may define a unit to include all or any portion of the airspace or subterranean space between two legally identifiable elevations, to include or exclude the surface of a legally described parcel of real property, to include or exclude airspace lying above and subterranean space lying below such surface, and to mean any specified combination of the foregoing, whether or not contiguous.
- (6) A description of any limited common elements, other than those specified in subsections 47C-2-102(2) and (4), as provided in ~~G.S. 47C-2-109(b)(7);~~G.S. 47C-2-109(b)(7).
- (7) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 47C-2-102(2) and (4), together with a statement that they may be so ~~alloeated;~~allocated.
- (8) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within or date by which each of those rights must be exercised; provided, however, that if no time limit or date is specified for the exercise of any particular development right or other special declarant right is specified in the declaration, the time limit for the exercise of that right shall be seven years from the date the declaration was recorded or by July 1, 2027, whichever is later. Notwithstanding the foregoing, the unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, exclusive of any votes appurtenant to any unit owned by the declarant, may consent to an extension, not exceeding 10 years from the expiration of any time limit for the exercise of any development right or special declarant right as specified in the declaration. An extension of a development right or special declarant right is effective upon recording of an amendment to the declaration approved by the unit owners as provided in this subdivision, provided that such amendment must be recorded prior to the expiration of the development right or special declarant right affected by such amendment. Approval by the required number of unit owners may be evidenced by execution of the amendment by the requisite number of unit owners or by certification of an officer of the association executing such amending confirming that the requisite number of unit owners approved such amendment at a duly called meeting of the unit owners.
- (9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect, together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real ~~estate;~~estate.

- (10) Any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will ~~lapse;lapse.~~
- (11) An allocation to each unit of the allocated interests in the manner described in ~~G.S. 47C-2-107;G.S. 47C-2-107.~~
- (12) Any restrictions on use, occupancy, or alienation of the ~~units;units.~~
- (13) The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the ~~declaration; anddeclaration.~~
- (14) All matters required by G.S. 47C-2-106, 47C-2-107, 47C-2-108, 47C-2-109, 47C-2-115, 47C-2-116, and 47C-3-103(d).

(b) The declaration may contain any other matters the declarant deems appropriate."

SECTION 3.(a) G.S. 47C-2-117 reads as rewritten:

"§ 47C-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under G.S. 47C-2-109(d) or 47C-2-110, the association under G.S. 47C-1-107, 47C-1-106(d), 47C-2-112(a), or 47C-2-113, or certain unit owners under G.S. 47C-2-108(b), 47C-2-112(a), 47C-2-113(b), or 47C-2-118(b), and except as limited by subsection (d), the declaration may be amended only by affirmative vote of or a written agreement signed by, unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) ~~No~~ Provided that the approval requirements for any amendment adopted pursuant to this section or G.S. 47C-2-105(a)(8) have been met, no action to challenge the validity of an amendment adopted by the association pursuant to this section or pursuant to G.S. 47C-2-105(a)(8) may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation. An amendment shall be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this Chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interest of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) The provisions of this Article and of condominium instruments recorded pursuant thereto shall be liberally construed in favor of the valid establishment of a condominium with respect to the submitted property. Except as otherwise provided in the declaration or explicitly prohibited by this Chapter, if any amendment to the declaration is necessary in the judgment of the executive board, then the executive board may, at its discretion, propose an amendment to the declaration for any of the following purposes:

- (1) To cure any ambiguity, to establish marketable title to units, or to correct or supplement any provision of the declaration, including plats or plans, that is defective, missing, or inconsistent with any other provision of the declaration or with this Chapter.
- (2) To conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or

- deeds of trust on units in condominium projects, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- (3) To comply with any statute, regulation, code, or ordinance which may be applicable to the condominium or association.
 - (4) To make a reasonable accommodation or permit a reasonable modification in favor of persons with disabilities, as may be defined by federal or State laws or regulations applicable to the association or its employees, unit owners, residents, or tenants.

The authority granted to the executive board under this subsection does not limit the authority of the executive board to propose any amendment for any other purpose permitted in the declaration or by this Chapter. Upon approval by the executive board of an amendment pursuant to this subsection, the executive board shall set a date for a meeting of the unit owners to consider ratification of the amendment not less than 10 nor more than 60 days after mailing of notice of such meeting, which notice shall include a copy or summary of the proposed amendment. There shall be no requirement that a quorum be present at the meeting. The amendment is ratified by the unit owners unless at that meeting unit owners holding a majority of the votes in the association reject the amendment. Any amendment recorded pursuant to this subsection in the office of the register of deeds in the county or counties where the condominium is located shall operate as correction of the declaration being corrected that relates back to, and is effective as of, the date the declaration being corrected was originally recorded in the office of the register of deeds, with the same effect as if the declaration were correct when the declaration was first recorded."

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

"§ 47C-2-117.1. Judicial reformation of declaration.

(a) A unit owners' association may bring a civil action in superior court in the county where the condominium or the greater part thereof is located to reform the condominium instruments to resolve ambiguities, errors, or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners. The condominium instruments may also be reformed to correct scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

The superior court shall have jurisdiction over matters set forth in G.S. 47C-2-117(f) regarding ownership of marketable title of the common elements or units and may, upon consideration of pleadings and such other matters as the court may in its exercise of equity allow, order (i) reformation, in whole or in part, of any provision of the condominium instruments and (ii) correction of mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose set forth in G.S. 47C-2-117.1(f).

(b) A complaint filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that all of the following requirements have been met:

- (1) The unit owners' association has made at least three good-faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in the complaint, and where the attempts to convene a duly called meeting have been unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

- (2) Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant has joined in the complaint of the unit owners' association.
- (3) A copy of the complaint has been served in accordance with Rule 4(j), 4(j1), or Rule 4(j5) of the North Carolina Rules of Civil Procedure on all unit owners and all beneficiaries of a deed of trust or mortgagees of record for a unit in the condominium.
- (4) The complaint notifies the recipient that if the recipient does not timely respond to the complaint pursuant to Article 3 of the North Carolina Rules of Civil Procedure, then the relief sought may be granted by the clerk of superior court.
- (5) No written response objecting to or disputing the petition is received within 45 days from the date the last person to be served was served with the complaint as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

(c) If the response of any person served with the complaint objects to or disputes the complaint, the action shall be transferred to the civil docket of the superior court for further proceedings.

(d) Any unit owner or beneficiary of a deed of trust or mortgagee of a condominium unit in the condominium objecting to or disputing the complaint shall have standing to participate in the reformation action. No reformation pursuant to this section shall affect the rights, priority of the lien, or otherwise materially impair or affect any condominium unit as collateral for a deed of trust or mortgage, or affect a beneficiary of a deed of trust or mortgagee's right to foreclose on a condominium unit as collateral without the duly acknowledged written consent of the beneficiary of the deed of trust or mortgagee.

(e) Nothing contained in this section shall prevent or preclude any unit owner or owners, at any time, from filing an action in superior court for judicial reformation related to the title, formation, or construction of the condominium declaration, plat or plans, to establish marketable title to the owner's or owners' unit or units.

(f) In any action brought under this section, the person prosecuting the reformation action must file a notice of pending litigation complying with Article 11 of Chapter 1 of the General Statutes.

(g) The period prescribed for the commencement of a collateral action contesting a judgment ordering reformation or correction under this section shall be one year from the date of entry of the judgment. This subsection does not apply to an action for damages sustained by any party as a result of the reformation or correction."

SECTION 4. G.S. 47C-2-101 of the General Statutes reads as rewritten:

"§ 47C-2-101. Execution and recordation of declaration.

(a) A declaration creating a condominium shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the condominium is located.

(b) ~~A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion~~ condominium must contain a certificate executed by an architect licensed under the provisions of Chapter 83 [83A] 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. Statutes stating that the plans for such building or buildings fully and accurately depict the structural components and mechanical systems of all buildings containing or comprising any units thereby created; provided, however, that such requirement shall not apply to any unit or portion of a unit, the boundaries of which comprise solely surface space, airspace, subterranean space, or any specified combination thereof, as provided in G.S. 47C-2-105(a)(5)."

SECTION 5. G.S. 47C-2-114(a) reads as rewritten:

"§ 47C-2-114. ~~Easement for encroachments.~~Monuments as boundaries.

(a) ~~To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans. The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability for willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, for failure to adhere to any representation in the public offering statement.~~

(b) With respect to all condominiums created prior to October 1, 1986, the provisions of subsection (a) of this section shall be deemed to apply to such condominiums, unless an action asserting otherwise shall have been brought within six months from October 1, 1986."

SECTION 6. Article 1 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"§ 47C-1-110. Substantial compliance and marketability.

In all instances where a declarant intended to establish on the declarant's property a condominium pursuant to this chapter, as established by the recording of a declaration, plats and plans, and by the subsequent recording of a deed or deeds intending to convey any unit or units, but failed to substantially comply with this chapter due to defects in the drafting, execution, or recording of the declaration, plats or plans, title to any unit that has been constructed and so deeded by the declarant for at least four calendar years without legal challenge shall be deemed to be marketable notwithstanding such defects."

SECTION 7. G.S. 47C-3-103 reads as rewritten:

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

(a) Except as provided in the declaration, the bylaws, ~~or in~~ subsection (b) or in other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall be deemed to stand in a fiduciary relationship to the association and the unit owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent ~~men~~ persons would exercise under similar circumstances in like positions. Officers shall act according to the standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall act according to the standards for directors of a nonprofit set forth in G.S. 55A-8-30.

(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47C-2-117), to terminate the condominium (G.S. 47C-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47C-3-103(e) and (f)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by ~~at least sixty-seven percent (67%)~~ a majority vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than members appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than ~~14~~ 10 nor more than ~~30~~ 60 days after mailing of the summary. There shall be no requirement that a quorum

be present at the meeting. The budget is ratified unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

...."

SECTION 8. G.S. 47C-3-108 of the General Statutes reads as rewritten:

"§ 47C-3-108. Meetings.

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than ~~50~~60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

...."

SECTION 9. G.S. 47C-3-109 reads as rewritten:

"§ 47C-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board of persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

(c) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted."

SECTION 10. G.S. 47C-3-115 reads as rewritten:

"§ 47C-3-115. Assessments for common expense.

...

(e) If any common expense is caused by the misconduct of any unit ~~owner, owner or occupant,~~ the association may assess that expense exclusively against ~~his unit.~~the unit of that owner or occupant.

...."

SECTION 11. Section 3(b) of this act becomes effective October 1, 2020, and applies to actions filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2020