

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 625
Committee Substitute Favorable 4/19/17

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

(Public)

Sponsors:

Referred to:

April 10, 2017

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 thousand dollars (\$25,000) or more of total funds invested or on deposit shall obtain and



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

12 (b) Management Agent or Company Coverage. – Any management agent or company
13 hired by a unit owners' association, who is authorized to disburse funds from accounts
14 belonging to the units owners' association, shall at all times be covered by a crime and fidelity
15 insurance policy. For purposes of this section, a management agent or company is any person
16 who, for 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
23 or 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'
28 association.
- 29 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)
30 through (5) of this subsection on behalf of a unit owners' association.

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

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

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

42 **"§ 47C-3-118. Association records.**

43 (a) The association shall keep financial records sufficiently detailed to enable the
44 association to comply with this chapter. All financial and other records, including records of
45 meetings of the association and executive board, shall be made reasonably available for
46 examination by any unit owner and the unit owner's authorized agents as required by the
47 bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation.
48 If the bylaws do not specify particular records to be maintained, the association shall keep
49 accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to
50 any specific information that is required by the bylaws to be assembled and reported to the unit
51 owners at specified times, the association shall make an annual income and expense statement

1 and balance sheet available to all unit owners at no charge and within 75 days after the close of
2 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~
3 ~~compilation, review, or audit of the association's books and records for the current or~~
4 ~~immediately preceding fiscal year may be required by a vote of the majority of the executive~~
5 ~~board or by the affirmative vote of a majority of the unit owners present and voting in person or~~
6 ~~by proxy at any annual meeting or any special meeting duly called for that purpose.~~

7"

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

10 **"§ 47C-3-118.1. Financial audits.**

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

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

21 **"§ 47F-1-102. Applicability.**

22 ...

23 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104
24 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),
25 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through
26 (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and
27 officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and
28 assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned
29 community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-113.1 (Crime and
30 Fidelity Policy Required), G.S. 47F-3-115 (Assessments for common expenses),
31 G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records),
32 G.S. 47F-3-118.1 (Financial Audits), and G.S. 47F-3-121 (American and State flags and
33 political sign displays), and G.S. 47F-3-104 (Transfer of Special Declarant Rights) apply to all
34 planned communities created in this State before January 1, 1999, unless the articles of
35 incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120
36 (Declaration limits on attorneys' fees) applies to all planned communities created in this State
37 before January 1, 1999. These sections apply only with respect to events and circumstances
38 occurring on or after January 1, 1999, and do not invalidate existing provisions of the
39 declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103
40 (Definitions) also applies to all planned communities created in this State before January 1,
41 1999, to the extent necessary in construing any of the preceding sections.

42"

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

45 **"§ 47F-3-113.1. Crime and fidelity policy required.**

46 (a) Executive Board Coverage. – Any lot owners' association with annual assessments
47 for common expenses of twenty-five thousand dollars (\$25,000) or with twenty-five thousand
48 dollars (\$25,000) or more of total funds invested or on deposit shall obtain and maintain, to the
49 extent available, a crime and fidelity insurance policy. The crime and fidelity insurance policy
50 shall insure the unit owners' association against losses resulting from theft or dishonesty
51 committed by the officers and members of the executive board, members of association

1 committees, past and present, and persons employed by the lot owners' association. The crime
2 and fidelity policy shall be written by an insurance company authorized to write a crime and
3 fidelity policy in the State and shall provide coverage in the amount of one hundred twenty-five
4 percent (125%) of the total funds on deposit or invested by the executive board plus one
5 hundred twenty-five percent (125%) of the annual budget of the lot owners' association as of
6 the last day of the association's last fiscal year, but is not required to be greater than one million
7 dollars (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of
8 the lot owners' association.

9 (b) Management Agent or Company Coverage. – Any management agent or company
10 hired by a lot owners' association, who is authorized to disburse funds from accounts belonging
11 to the lot owners' association, shall at all times be covered by a crime and fidelity insurance
12 policy. For purposes of this section, a management agent or company is any person who, for
13 compensation or the expectation thereof, performs two or more of the following:

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

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

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

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

38 **"§ 47F-3-118. Association records.**

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

1 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
2 ~~duly called for that purpose.~~

3"

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

6 "**§ 47F-3-118.1. Financial audits.**

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

15 **SECTION 9.** This act becomes effective January 1, 2018. The audit requirements
16 in Section 6 and Section 8 apply to fiscal years beginning on or after the effective date of this
17 act.