

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 814

Short Title: Planned Community Act Changes. (Public)

Sponsors: Representatives Jordan and Blust (Primary Sponsors).

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

Referred to: Judiciary III

April 13, 2017

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;~~ 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 **PART III. GENERAL PROVISIONS**

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

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

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

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