

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30365-MQfqq-80 (03/15)

Short Title: Community Association Property Management Act. (Public)

Sponsors: Representatives Jordan, Blust, and R. Moore (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE PRACTICE OF COMMUNITY ASSOCIATION
PROPERTY MANAGEMENT WITHIN THE NORTH CAROLINA REAL ESTATE
COMMISSION AND TO PROVIDE EDUCATION AND TRAINING FOR BOARD
MEMBERS OF COMMUNITY ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-16 reads as rewritten:

**"§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund;
management.**

(a) There is hereby created a special fund to be known as the "Real Estate Education and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person or community association has suffered a direct monetary loss by reason of certain acts committed by any real estate ~~broker~~broker, including when a broker is acting as a community association property manager. The Commission may also expend money from the fund to create books and other publications, courses, forms, seminars, and other programs and materials to educate licensees and the public in real estate subjects. However, the Commission shall make no expenditures from the fund for educational purposes if the expenditure will reduce the balance of the fund to an amount less than two hundred thousand dollars (\$200,000).

...."

SECTION 2. Chapter 93A of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Community Association Property Management.

"§ 93A-95. Title.

This Article shall be known as the "Community Association Property Management Act."

"§ 93A-96. Purpose.

(a) The General Assembly finds that an owners' association, organized pursuant to Chapter 47C or 47F of the General Statutes, that in whole or in part burdens or pertains to real property in this State is an interest in real property, and as such shall be governed by the laws of this State relating to real property.

(b) The General Assembly further finds that managing an owners' association, including the collecting and handling of assessments and other funds and the management of property of the owners' association, are real property transactions. An improperly managed owners' association can adversely affect the real property through foreclosure of the real property of its



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1 members or the bankruptcy of the owner's association. Improper management can also affect
2 the rights of owners' association members as consumers and real property owners. It is the
3 purpose and intent of this Article to protect the public from persons that are unqualified to
4 provide management services to owners' associations and from unprofessional conduct by
5 persons regulated pursuant to this Article.

6 **"§ 93A-97. Definitions.**

7 (a) The following definitions apply in this Article:

8 (1) Commission. – The North Carolina Real Estate Commission.

9 (2) Community association. – A unit owners' association organized pursuant to
10 Chapter 47C of the General Statutes or a lot owners' association organized
11 pursuant to Chapter 47F of the General Statutes.

12 (3) Community association property management. – Services provided to a
13 community association for remuneration, provided that the bylaws of the
14 community association specifically provide that the executive board is
15 permitted to delegate the authority, for any of the following:

16 a. Collecting assessments and controlling and disbursing funds for a
17 community association.

18 b. Assisting a community association in preparing budgets or other
19 financial documents.

20 c. Advising and assisting a community association in obtaining
21 insurance.

22 d. Assisting in the noticing and conducting of meetings upon approval
23 of the members or the board.

24 (b) The following are exempt from the provisions of this Article when not acting as an
25 agent of a community association manager or community association management company:

26 (1) An attorney licensed pursuant to Chapter 84 of the General Statutes.

27 (2) A public accountant certified pursuant to Chapter 93 of the General Statutes.

28 (3) An insurance agent, adjuster, broker, limited representative, or other
29 business entity licensed pursuant to Article 33 of Chapter 58 of the General
30 Statutes.

31 **"§ 93A-98. Administration of Article; rule making.**

32 The Commission shall have the authority to administer this Article and shall adopt rules
33 consistent with its provisions and the laws of this State. The Commission shall prescribe the
34 forms and procedures for submitting information as provided by this Article.

35 **"§ 93A-99. License required.**

36 On or after October 1, 2017, it shall be unlawful for any person to (i) act as a community
37 association property manager, (ii) directly or indirectly engage in the business of community
38 association property management, (iii) hold oneself to be a community association property
39 manager, or (iv) use the title "Licensed Community Association Property Manager" in this
40 State without first obtaining a real estate broker license from the Commission as provided in
41 Article 1 of this Chapter.

42 **"§ 93A-100. Limitations on brokers acting as managers.**

43 (a) The Commission shall not issue a license to provide community association
44 property management to a partnership, association, corporation, limited liability company, or
45 other business entity.

46 (b) A licensee shall not, while practicing community association property management,
47 exercise control over any of the following:

48 (1) The reserves or investment accounts of a community association.

49 (2) An operating account of a community association, unless all of the following
50 apply:

- 1 a. Control of the account is allowed under a contract approved by the
2 executive board of the community association.
3 b. Duplicate financial statements concerning the account are sent by the
4 institution holding the account to the licensee and the community
5 association's executive board at separate addresses.

6 (c) A licensee shall not give legal advice in violation of the laws governing the practice
7 of law under Chapter 84 of the General Statutes.

8 (d) A licensee shall not give financial advice in violation of the laws governing certified
9 public accountants under Chapter 93 of the General Statutes.

10 **"§ 93A-101. Fidelity bond required.**

11 (a) Every community association property manager engaged in community association
12 property management shall at all times be covered by a fidelity bond or an insurance policy that
13 complies with the provisions of this section.

14 (b) A fidelity bond required by this section shall be in an amount of at least twenty
15 thousand dollars (\$20,000) and shall comply with all of the following:

16 (1) Be written by an insurance company authorized to write fidelity bonds in
17 this State.

18 (2) Cover the community association property manager and all or a portion of
19 the employees and protect all or a portion of the community association
20 funds in the custody of the community association property manager.

21 (3) Provide that the insurance company issuing the bond may not cancel,
22 substantially modify, or refuse to renew the bond without giving at least 30
23 days' prior written notice to the executive board of the community
24 association, except in the case of nonpayment of premiums, in which case
25 the insurance company shall provide at least 10 days' prior written notice to
26 the executive board.

27 (4) Contain any other provisions as may be required by the Commission.

28 (c) A licensee shall furnish proof of required bond coverage to the Commission before
29 engaging in community association property management activities and upon license renewal if
30 the licensee continues to engage in community association property management activities.

31 **"§ 93A-102. Contracts for broker services.**

32 Every contract entered into by a licensed broker and a community association to provide
33 community association property management services shall be in writing and contain all of the
34 following conditions:

35 (1) The contract shall expire one year from the date the contract is entered into;
36 provided, however, the contract may contain a clause to permit the contract
37 to continue on a month-to-month basis upon the expiration of the original
38 term.

39 (2) The contract shall contain a clause allowing the community association to
40 cancel the contract for any reason by providing at least 60 days' notice to the
41 licensed broker.

42 (3) The contract shall provide for a notice of cancellation with proper notice
43 before the expiration of the contract and prior to contract renewal.

44 **"§ 93A-103. Registration of community associations.**

45 (a) Each community association shall register with the Commission annually on a form
46 to be provided by the Commission. To register, a community association shall provide all of the
47 following to the Commission:

48 (1) The name and address of the community association.

49 (2) The names, addresses, and phone numbers of members of the community
50 association's executive board.

51 (3) The name and address of the agent for service of process.

- 1 (4) The name of the licensee broker who has control of the funds of the
2 community association.
3 (5) The name of the community association property manager's bond company
4 or insurance company.
5 (6) Any other information the Commission deems necessary.

6 (b) The registration form shall be accompanied by a fee in the amount of one hundred
7 dollars (\$100.00) to cover the cost of registration, education, and advising the community
8 associations on matters related to the real property functions of a community association or any
9 changes to the registration process.

10 (c) The community association shall be required to make any corrections or
11 modifications to the original information provided in the registration to the Commission within
12 15 days from the date of the need for the change.

13 **"§ 93A-104. Education requirements.**

14 Within 60 days after election to a community association's executive board, a board
15 member shall complete a minimum of four hours of education on the laws related to
16 community associations under Chapter 47C or Chapter 47F of the General Statutes, the
17 provisions of this Article, rules adopted by the Commission, and any other matters the
18 Commission deems relevant. The education required by this section shall be provided by the
19 Commission. The community association shall pay to the Commission a fee for the course in
20 the amount of seventy-five dollars (\$75.00) for each individual board member taking the
21 course. The Commission may provide an online education course to meet the requirements of
22 this section."

23 **SECTION 3.(a)** G.S. 47F-3-103 is amended by adding a new subsection to read:

24 "(h) If a member elected to the executive board fails to comply with the educational
25 requirement provided in G.S. 93A-104, then the board member shall submit a written notice of
26 resignation to the board. The failure of a member to resign shall be deemed to be a breach of
27 the duty of good faith to the association, as provided in subsection (a) of this section, and the
28 board member shall be subject to discipline pursuant to G.S. 47F-3-107.1 and subsection (b) of
29 this section."

30 **SECTION 3.(b)** G.S. 47C-3-103 is amended by adding a new subsection to read:

31 "(i) If a member elected to the executive board fails to comply with the educational
32 requirement provided in G.S. 93A-104, then the board member shall submit a written notice of
33 resignation to the board. The failure of a member to resign shall be deemed to be a breach of
34 the duty of good faith to the association, as provided in subsection (a) of this section, and the
35 board member shall be subject to discipline pursuant to G.S. 47C-3-107.1 and subsection (b) of
36 this section."

37 **SECTION 4.** This act becomes effective October 1, 2017.