

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

H

1

HOUSE BILL 920

Short Title: Condominium Association Changes. (Public)

Sponsors: Representatives D. Hall, K. Hall, and Hardister (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

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

April 22, 2019

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING
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 vertical 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 horizontal unit boundaries, with reference to established datum, and (iii) an identifying number for each unit.



- 1 (6a) The certificate by a registered land surveyor licensed under the provisions of
 2 Chapter 89C of the General Statutes stating that the plats or plans accurately
 3 depict the legal boundaries and the physical location of the units and other
 4 improvements relative to those ~~boundaries;~~boundaries.
 5 (7) The locations and dimensions of limited common elements; however, parking
 6 spaces and the limited common elements described in subsections
 7 47C-2-102(2) and (4) need not be shown, except for decks, stoops, porches,
 8 balconies, and ~~patios;~~patios.
 9 (8) A legally sufficient description of any real estate in which the unit owners will
 10 own only an estate for years, labeled as "leasehold real ~~estate";~~estate."
 11 (9) The distance between noncontiguous parcels of real estate comprising the
 12 ~~econdominium;~~condominium.
 13 (10) Any unit in which the declarant has reserved the right to create additional units
 14 or common elements.
 15 (c) A plat may also show the intended location and dimensions of any contemplated
 16 improvement to be constructed anywhere within the condominium. Any contemplated
 17 improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".
 18 (d) Upon exercising any development right, the declarant shall record either new plats
 19 and plans necessary to conform to the requirements of subsections (a), (b), and (c) or new
 20 certifications of plats and plans previously recorded if those plats and plans otherwise conform
 21 to the requirements of those subsections.
 22 (e) In order to be recorded, plats or plans filed ~~shall;~~shall meet the following
 23 requirements:
 24 (1) Be reproducible plats or plans on cloth, linen, film, or other permanent
 25 material and be submitted in that ~~form;~~and form.
 26 (2) Have an outside marginal size of not more than 21 inches by 30 inches nor
 27 less than eight and one-half inches by 11 inches, including one and one-half
 28 inches for binding on the left margin and a one-half inch border on each of the
 29 other sides. Where size of the buildings or suitable scale to assure legibility
 30 require, plats or plans may be placed on two or more sheets with appropriate
 31 match lines.
 32 (f) The fee for recording each plat or plan sheet submitted shall be as prescribed by
 33 G.S. 161-10(a)(3)."

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

35 **"§ 47C-2-105. Contents of declaration.**

- 36 (a) The declaration for a condominium must ~~contain;~~contain all of the following:
 37 (1) The name of the condominium, which must include the word "condominium"
 38 or be followed by the words "a condominium", and the name of the
 39 ~~association;~~association.
 40 (2) The name of every county in which any part of the condominium is
 41 ~~situated;~~situated.
 42 (3) A legally sufficient description of the real estate included in the
 43 ~~econdominium;~~condominium.
 44 (4) A statement of the maximum number of units which the declarant reserves the
 45 right to ~~create;~~create.
 46 (5) A ~~description (by description, by reference to the plats or plans described in~~
 47 ~~G.S. 47C-2-109) G.S. 47C-2-109,~~ of the boundaries of each unit created by
 48 the declaration, including the unit's identifying ~~number;~~number.
 49 (6) A description of any limited common elements, other than those specified in
 50 subsections 47C-2-102(2) and (4), as provided in ~~G.S.~~
 51 ~~47C-2-109(b)(7);~~G.S. 47C-2-109(b)(7).

- 1 (7) A description of any real estate (except real estate subject to development
2 rights) which may be allocated subsequently as limited common elements,
3 other than limited common elements specified in subsections 47C-2-102(2)
4 and (4), together with a statement that they may be so ~~allocated~~; allocated.
- 5 (8) A description of any development rights and other special declarant rights
6 reserved by the declarant, together with a legally sufficient description of the
7 real estate to which each of those rights applies, and a time limit within or date
8 by which each of those rights must be exercised; provided, however, that if no
9 time limit or date is specified for the exercise of any development right or
10 other special declarant right is specified in the declaration, the time limit for
11 the exercise of that right shall be seven years from the date the declaration was
12 recorded. Notwithstanding the foregoing, if the declaration so provides, the
13 unit owners of units to which at least sixty-seven percent (67%) of the votes
14 in the association are allocated, exclusive of any votes appurtenant to any unit
15 owned by the declarant, may consent to an extension, not exceeding 10 years
16 from the expiration of any time limit for the exercise of any development right
17 or special declarant right as specified in the declaration. An extension of a
18 development right or special declarant right must occur within one year prior
19 to the date upon which the time limit would otherwise have expired.
- 20 (9) If any development right may be exercised with respect to different parcels of
21 real estate at different times, a statement to that effect, together with (i) either
22 a statement fixing the boundaries of those portions and regulating the order in
23 which those portions may be subjected to the exercise of each development
24 right or a statement that no assurances are made in those regards, and (ii) a
25 statement as to whether, if any development right is exercised in any portion
26 of the real estate subject to that development right, that development right
27 must be exercised in all or in any other portion of the remainder of that real
28 ~~estate~~; estate.
- 29 (10) Any other conditions or limitations under which the rights described in
30 paragraph (8) may be exercised or will ~~lapse~~; lapse.
- 31 (11) An allocation to each unit of the allocated interests in the manner described in
32 ~~G.S. 47C-2-107~~; G.S. 47C-2-107.
- 33 (12) Any restrictions on use, occupancy, or alienation of the ~~units~~; units.
- 34 (13) The recording data for recorded easements and licenses appurtenant to or
35 included in the condominium or to which any portion of the condominium is
36 or may become subject by virtue of a reservation in the ~~declaration~~;
37 ~~and declaration~~.
- 38 (14) All matters required by G.S. 47C-2-106, 47C-2-107, 47C-2-108, 47C-2-109,
39 47C-2-115, 47C-2-116, and 47C-3-103(d).
- 40 (b) The declaration may contain any other matters the declarant deems appropriate."

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

42 **"§ 47C-2-117. Amendment of declaration.**

43 (a) Except in cases of amendments that may be executed by a declarant under
44 G.S. 47C-2-109(d) or 47C-2-110, the association under G.S. 47C-1-107, 47C-1-106(d),
45 47C-2-112(a), or 47C-2-113, or certain unit owners under G.S. 47C-2-108(b), 47C-2-112(a),
46 47C-2-113(b), or 47C-2-118(b), and except as limited by subsection (d), the declaration may be
47 amended only by affirmative vote of or a written agreement signed by, unit owners of units to
48 which at least sixty-seven percent (67%) of the votes in the association are allocated or any larger
49 majority the declaration specifies. The declaration may specify a smaller number only if all of
50 the units are restricted exclusively to nonresidential use.

1 (b) No action to challenge the validity of an amendment adopted by the association
2 pursuant to this section may be brought more than one year after the amendment is recorded.

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

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

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

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

21 (1) To cure any ambiguity, to establish marketable title to units, or to correct or
22 supplement any provision of the declaration, including plats or plans, that is
23 defective, missing, or inconsistent with any other provision of the declaration
24 or with this Chapter.

25 (2) To conform to the requirements of any agency or entity that has established
26 national or regional standards with respect to loans secured by mortgages or
27 deeds of trust on units in condominium projects, such as the Federal National
28 Mortgage Association or the Federal Home Loan Mortgage Corporation.

29 (3) To comply with any statute, regulation, code, or ordinance which may be
30 applicable to the condominium or association.

31 (4) To make a reasonable accommodation or permit a reasonable modification in
32 favor of persons with disabilities, as may be defined by federal or State laws
33 or regulations applicable to the association or its employees, unit owners,
34 residents, or tenants.

35 Any amendment recorded pursuant to this subsection in the office of the register of deeds in
36 the county or counties where the condominium is located shall operate as correction of the
37 declaration being corrected that relates back to, and is effective as of, the date the declaration
38 being corrected was originally recorded in the office of the register of deeds, with the same effect
39 as if the declaration were correct when the declaration was first recorded."

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

42 **"§ 47C-2-117.1. Judicial reformation of declaration.**

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

1 Upon petition and hearing pursuant to this section, the clerk of superior court shall have
2 jurisdiction over matters set forth in G.S. 47C-2-117(f) regarding ownership of marketable title
3 of the common elements or units and may (i) reform, in whole or in part, any provision of the
4 condominium instruments and (ii) correct mistakes or any other error in the condominium
5 instruments that may exist with respect to the declaration for any other purpose set forth in
6 G.S. 47C-2-117.1(f).

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

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

17 (2) Where the declarant of the condominium still owns a unit or continues to have
18 any special declarant rights in the condominium, the declarant has joined in
19 the petition of the unit owners' association.

20 (3) A copy of the petition has been sent at least 30 days before the petition is filed,
21 as evidenced by an affidavit verified by oath of the principal officer of the unit
22 owners' association, to all unit owners and all beneficiaries of a deed of trust
23 or mortgagees of record for a unit in the condominium.

24 (4) The petition provides sufficient notice to a recipient of (i) the right to object
25 or dispute the petition, (ii) the 30-day time limit for submitting a written
26 objection or dispute, and (iii) the addresses and facsimile numbers of the
27 executive board and the authorized attorney.

28 (5) No written objection or dispute of the petition is received within 45 days from
29 the date the last person to be served was served with the petition as evidenced
30 by an affidavit verified by oath of the principal officer of the unit owners'
31 association.

32 (c) Each person served with the petition that wishes to object to or dispute the petition
33 must do so in writing sent or delivered to the executive board within 30 days after the notice of
34 the petition is provided to that person or entity. In complying with any requirement for objecting
35 to or disputing the petition, the written objection or dispute must be addressed to the executive
36 board and delivered by at least one of the following methods:

37 (1) Delivering a copy to the executive board by handing it to a member of the
38 executive board or by leaving it at the executive board's office with a member
39 of the executive board or a managing employee of the unit owners' association.

40 (2) Mailing a copy to the authorized attorney's mailing address provided in the
41 notice of intent.

42 (3) Sending a copy by facsimile to the authorized attorney's facsimile number
43 provided in the notice of intent, as evidenced by a facsimile receipt
44 confirmation.

45 (d) Any unit owner or beneficiary of a deed of trust or mortgagee of a condominium unit
46 in the condominium objecting or disputing the petition shall have standing to participate in the
47 reformation proceedings before the clerk of superior court. No reformation pursuant to this
48 section shall affect the rights, priority of the lien, or otherwise materially impair or affect any
49 condominium unit as collateral for a deed of trust or mortgage, or affect a beneficiary of a deed
50 of trust or mortgagee's right to foreclose on a condominium unit as collateral without the duly
51 acknowledged written consent of the beneficiary of the deed of trust or mortgagee."

1

SECTION 4. This act is effective when it becomes law.