

§ 47F-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Chapter:

- (1) "Affiliate of declarant" means any person who succeeds to any special declarant rights and who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person is any of the following:
 - a. A general partner, officer, director, or employer of the declarant.
 - b. Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the declarant.
 - c. Controls in any manner the election of a majority of the directors of the declarant.
 - d. Has contributed more than twenty percent (20%) of the capital of the declarant.

A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

- (2) "Allocated interests" means the common expense liability and votes in the association allocated to each lot.
- (3) "Association" or "owners' association" means the association organized as allowed under North Carolina law, including G.S. 47F-3-101.
- (4) "Common elements" means any real estate within a planned community owned or leased by the association, other than a lot.
- (5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (6) "Common expense liability" means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.
- (7) "Condominium" means real estate, as defined and created under Chapter 47C [of the General Statutes].
- (8) "Cooperative" means real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.
- (9) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person's or group's interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

- (10) "Declaration" means any instruments, however denominated, that create a planned community and any amendments to those instruments.
- (11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration (i) to add real estate to a planned community; (ii) to create lots, common elements, or limited common elements within a planned community; (iii) to subdivide or combine lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community.
- (12) Reserved.
- (13) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (14), (15) Reserved.
- (16) "Leasehold planned community" means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.
- (17) "Lessee" means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.
- (18) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots.
- (19) "Lot" means a physical portion of the planned community designated for separate ownership or occupancy by a lot owner.
- (20) "Lot owner" means a declarant or other person who owns a lot, or a lessee of a lot in a leasehold planned community whose lease expires simultaneously with any lease the expiration or termination of which will remove the lot from the planned community, but does not include a person having an interest in a lot solely as security for an obligation.
- (21) "Master association" means an organization described in G.S. 47F-2-120, whether or not it is also an association described in G.S. 47F-3-101.
- (22) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- (23) "Planned community" means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less than [than] 20 years in a lot, including renewal options.
- (24) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.
- (25) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and

interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

- (26) "Reasonable attorneys' fees" means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.
- (27) Reserved.
- (28) "Special declarant rights" means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.
- (29) Reserved. (1998-199, s. 1; 2014-57, s. 2.)