

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1479*

Short Title: Uniform Unincorporated Nonprofit Assoc. Act. (Public)

Sponsors: Senators Hagan and Hartsell.

Referred to: Judiciary II.

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT
3 ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The General Statutes are amended by adding a new Chapter to
7 read:

8 **"Chapter 59B.**

9 **"Uniform Unincorporated Nonprofit Association Act.**

10 **"§ 59B-1. Short title.**

11 This Chapter may be cited as the Uniform Unincorporated Nonprofit Association
12 Act.

13 **"§ 59B-2. Definitions.**

14 In this Chapter:

- 15 (1) "Member" means a person who, under the rules or practices of a
16 nonprofit association, may participate in the selection of persons
17 authorized to manage the affairs of the nonprofit association or in the
18 development of policy of the nonprofit association.
- 19 (2) "Nonprofit association" means an unincorporated organization, other
20 than one created by a trust and other than a limited liability company,
21 consisting of two or more members joined by mutual consent for a
22 common, nonprofit purpose. However, joint tenancy, tenancy in
23 common, or tenancy by the entireties does not by itself establish a
24 nonprofit association, even if the co-owners share use of the property
25 for a nonprofit purpose.
- 26 (3) "Person" means an individual, corporation, limited liability company,
27 business trust, estate, trust, partnership, association, joint venture,
28 government, governmental subdivision, agency, or instrumentality, or
29 any other legal or commercial entity.

1 (4) "State" means a state of the United States, the District of Columbia,
2 the Commonwealth of Puerto Rico, or any territory or insular
3 possession subject to the jurisdiction of the United States.

4 **"§ 59B-3. Supplementary general principles of law and equity.**

5 Principles of law and equity supplement this Chapter unless displaced by a particular
6 provision of it.

7 **"§ 59B-4. Title to property; choice of law.**

8 Real and personal property in this State may be acquired, held, encumbered, and
9 transferred by a nonprofit association, whether or not the nonprofit association or a
10 member has any other relationship to this State.

11 **"§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or**
12 **beneficiary.**

13 (a) A nonprofit association is a legal entity separate from its members for the
14 purposes of acquiring, holding, encumbering, and transferring real and personal
15 property.

16 (b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer
17 an estate or interest in real or personal property.

18 (c) A nonprofit association may be a beneficiary of a trust or contract, a legatee,
19 or a devisee.

20 (d) Any judgments and executions against a nonprofit association bind its real
21 and personal property in like manner as if it were incorporated.

22 **"§ 59B-6. Statement of authority as to real property.**

23 (a) A nonprofit association may execute and record a statement of authority to
24 transfer an estate or interest in real property in the name of the nonprofit association.

25 (b) An estate or interest in real property in the name of a nonprofit association
26 may be transferred by a person so authorized in a statement of authority recorded in the
27 office of the register of deeds in the county in which a transfer of the property would be
28 recorded.

29 (c) A statement of authority must be set forth in a document styled "affidavit"
30 that contains all of the following:

31 (1) The name of the nonprofit association.

32 (2) Reserved for future codification purposes.

33 (3) The street address, and the mailing address if different from the street
34 address, of the nonprofit association, and the county in which it is
35 located, or, if the nonprofit association does not have an address in this
36 State, its address out-of-state.

37 (4) That the association is an unincorporated nonprofit association.

38 (5) The name or office of a person authorized to transfer an estate or
39 interest in real property held in the name of the nonprofit association.

40 (6) That the association has duly authorized the member or agent
41 executing the statement to do so.

42 (d) A statement of authority must be sworn to and subscribed in the same manner
43 as an affidavit by a member or agent who is not the person authorized to transfer the
44 estate or interest.

1 (e) The register of deeds shall collect a fee for recording a statement of authority
2 in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the
3 name of the nonprofit association and the member or agent signing the statement of
4 authority or any subsequent document relating thereto as Grantor and the name of the
5 appointee as Grantee.

6 (f) An amendment, including a termination, of a statement of authority must
7 meet the requirements for execution and recording of an original statement. Unless
8 terminated earlier, a recorded statement of authority or its most recent amendment
9 expires by operation of law five years after the date of the most recent recording.

10 (g) If the record title to real property is in the name of a nonprofit association and
11 the statement of authority is recorded in the office of the register of deeds in the county
12 in which a transfer of real property would be recorded, the authority of the person or
13 officer named in a statement of authority is conclusive in favor of a person who gives
14 value without notice that the person or officer lacks authority.

15 **"§ 59B-7. Liability of members or other persons.**

16 (a) A nonprofit association is a legal entity separate from its members for the
17 purposes of determining and enforcing rights, duties, and liabilities.

18 (b) A person is not liable for the contract, tort, or other obligations of a nonprofit
19 association merely because the person is a member, is authorized to participate in the
20 management of the affairs of the nonprofit association, or is referred to as a "member"
21 by the nonprofit association.

22 (c) Reserved for future codification purposes.

23 (d) A tortious act or omission of a member or other person for which a nonprofit
24 association is liable is not imputed to a person merely because the person is a member
25 of the nonprofit association, is authorized to participate in the management of the affairs
26 of the nonprofit association, or is referred to as a "member" by the nonprofit association.

27 (e) A member of, or a person referred to as a "member" by, a nonprofit
28 association may assert a claim against or on behalf of the nonprofit association. A
29 nonprofit association may assert a claim against a member or a person referred to as a
30 "member" by the nonprofit association.

31 **"§ 59B-8. Capacity to assert and defend; standing.**

32 (a) A nonprofit association, in its name, may institute, defend, intervene, or
33 participate in a judicial, administrative, or other governmental proceeding or in an
34 arbitration, mediation, or any other form of alternative dispute resolution.

35 (b) A nonprofit association may assert a claim in its name on behalf of its
36 members or persons referred to as "members" by the nonprofit association if one or
37 more of them have standing to assert a claim in their own right, the interests the
38 nonprofit association seeks to protect are germane to its purposes, and neither the claim
39 asserted nor the relief requested requires the participation of a member or a person
40 referred to as a "member" by the nonprofit association.

41 **"§ 59B-9. Effect of judgment or order.**

42 A judgment or order against a nonprofit association is not by itself a judgment or
43 order against a member, a person referred to as a "member" by the nonprofit

1 association, or a person authorized to participate in the management of the affairs of the
2 nonprofit association.

3 **"§ 59B-10. Disposition of personal property of inactive nonprofit association.**

4 If a nonprofit association has been inactive for three years or longer, or a different
5 period specified in a document of the nonprofit association, a person in possession or
6 control of personal property of the nonprofit association may transfer custody of the
7 property:

- 8 (1) If a document of the nonprofit association or document of gift specifies
9 a person to whom transfer is to be made under these circumstances, to
10 that person; or
- 11 (2) If no person is so specified, to a nonprofit association, nonprofit
12 corporation, or other nonprofit entity pursuing broadly similar
13 purposes, or to a government or governmental subdivision, agency, or
14 instrumentality.

15 **"§ 59B-11. Appointment of agent to receive service of process.**

16 (a) A nonprofit association may file in the office of the Secretary of State a
17 statement appointing an agent authorized to receive service of process, notice, or
18 demand required or permitted by law to be served on a nonprofit association.

19 (b) A statement appointing an agent must set forth all of the following:

- 20 (1) The name of the nonprofit association.
- 21 (2) Reserved for future codification purposes.
- 22 (3) The street address, and the mailing address if different from the street
23 address, of the nonprofit association, and the county in which it is
24 located, or, if the nonprofit association does not have an address in this
25 State, its address out-of-state.
- 26 (4) The name of the person in this State authorized to receive service of
27 process and the person's address, including the street address, in this
28 State.

29 (c) A statement appointing an agent must be signed and acknowledged by a
30 person authorized to manage the affairs of a nonprofit association. The statement must
31 also be signed and acknowledged by the person appointed agent, who thereby accepts
32 the appointment. The appointed agent may resign by filing a resignation in the office of
33 the Secretary of State and giving written notice to the nonprofit association at its last
34 known address.

35 (d) The sole duty of the appointed agent to the nonprofit association is to forward
36 to the nonprofit association at its last known address any notice, process, or demand that
37 is served on the appointed agent.

38 (e) The Secretary of State is not an agent for service of any process, notice, or
39 demand on any nonprofit association.

40 (f) The Secretary of State shall collect the following fees when the documents
41 described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
42		
43	(1) <u>Statement appointing an agent to receive service of process</u>	<u>\$5.00</u>
44	(2) <u>Amendment of statement appointing an agent</u>	<u>5.00</u>

1 (b) Unincorporated nonprofit associations are subject to Chapter 59B of the
2 General Statutes and not this section."

3 **SECTION 4.** G.S. 47C-3-101 reads as rewritten:

4 "**§ 47C-3-101. Organization of unit owners' association.**

5 A unit owners' association shall be organized no later than the date the first unit in
6 the condominium is conveyed. The membership of the association at all times shall
7 consist exclusively of all the unit owners, or following termination of the condominium,
8 of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The
9 association shall be organized as a profit or nonprofit corporation or as an
10 unincorporated nonprofit association."

11 **SECTION 5.** If any provision of this act or its application to any person or
12 circumstance is held invalid, the invalidity does not affect any other provisions or
13 applications of this act which can be given effect without the invalid provision or
14 application, and to this end the provisions of this act are severable.

15 **SECTION 6.** This act does not affect an action or proceeding commenced or
16 right accrued before this act takes effect.

17 **SECTION 7.** The Revisor of Statutes shall cause to be printed along with
18 this act all relevant portions of the official comments to the Uniform Unincorporated
19 Nonprofit Association Act and all explanatory comments of the drafters of this act as
20 the Revisor deems appropriate.

21 **SECTION 8.** This act becomes effective January 1, 2007.