

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 871
Apr 11, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH30414-LUfqq-124A (03/28)

Short Title: Regulate Community Association Managers. (Public)

Sponsors: Representatives R. Moore, Iler, Alexander, and W. Brawley (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE REAL ESTATE COMMISSION TO REGULATE
3 COMMUNITY ASSOCIATION PROPERTY MANAGERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 93A-2 is amended by adding the following new subsection to
6 read:

7 "(b1) The term "community association property management" as defined under Article
8 2A of this Chapter means an activity undertaken for an owner's association regarding property
9 organized under and subject to Chapters 47C and 47F of the General Statutes. The term
10 includes the authorization to impose a fee that may become a lien on the parcel."

11 SECTION 2. G.S. 93A-16(a) reads as rewritten:

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

23 SECTION 3. Chapter 93A of the General Statutes is amended by adding the
24 following new Article to read:

25 "Article 2A.

26 "Community Association Property Management.

27 "§ 93A-30.1. Title.

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

29 "§ 93A-30.2. Purpose.

30 (a) The General Assembly finds that a community association as described under and
31 subject to Chapters 47C and 47F of the General Statutes that in whole or in part burdens or
32 pertains to real property in this State is deemed to be an interest in real estate, and as such shall
33 be governed by the laws of this State relating to real estate.

34 (b) The General Assembly further finds that managing a community association by
35 collecting and handling assessments and other funds and managing property of the community
36 association are deemed to be real estate transactions. If a community association is not properly



* D R H 3 0 4 1 4 - L U F Q Q - 1 2 4 A *

1 managed, the improper management can adversely affect the real estate through foreclosure of
2 the community association member's property or bankruptcy of the community association.
3 Improper management may also affect the rights of the community association members as
4 consumers and property owners. It is the purpose and intent of this Article to protect the public
5 from persons unqualified to provide community association management and from
6 unprofessional conduct by persons regulated pursuant to this Article.

7 **"§ 93A-30.3. Definitions.**

8 The following definitions apply in this Article:

- 9 (1) Commission. – The North Carolina Real Estate Commission.
10 (2) Community association. – Common interest ownership associations as
11 described in and subject to Chapters 47C and 47F of the General Statutes.
12 (3) Community association property management. – Services provided to a
13 community association for remuneration for any of the following so long as
14 the bylaws of the community association specifically provide that the board
15 of directors of the community association is permitted to delegate the
16 authority:
17 a. Collecting assessments and controlling and disbursing funds for a
18 community association.
19 b. Assisting a community association in preparing budgets or other
20 financial documents.
21 c. Advising and assisting a community association in obtaining
22 insurance.
23 d. Assisting in the noticing and conducting meetings upon approval of
24 the members.

25 **"§ 93A-30.4. Rule-making authority.**

26 The Commission shall have the authority to administer this Article and adopt rules
27 consistent with the provisions of this Article and the laws of this State. The Commission may
28 prescribe the forms and procedures for submitting information to the Commission under this
29 Article.

30 **"§ 93A-30.5. License required.**

31 On or after October 1, 2013, it shall be unlawful for any person in this State to act as a
32 community association property manager, directly or indirectly engage in the business of
33 community association property management, hold himself or herself out to be a community
34 association property manager, or use the title "Licensed Community Association Property
35 Manager" without first obtaining a license from the Commission as provided in Article 1 of this
36 Chapter.

37 **"§ 93A-30.6. Limitations on brokers acting as managing agents.**

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

41 (b) A licensee shall not, within the practice of community association property
42 management, exercise control over the following:

- 43 (1) The reserves or investment accounts of a community association.
44 (2) An operating account of a community association unless (i) allowed under a
45 contract approved by the board of directors of the community association
46 and (ii) duplicate financial statements concerning the account are sent by the
47 institution holding the account to the licensee and the community
48 association's board of directors at a separate address.

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

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

3 **"§ 93A-30.7. Fidelity bond required.**

4 (a) Every community association property manager engaged in community association
5 property management shall at all times be covered by a fidelity bond or an insurance policy
6 complying with the provisions of this section.

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

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

11 (2) Cover the community association property manager and all or a portion of
12 the employees and protect all or a portion of the community association
13 funds in the custody of the community association property.

14 (3) Provide that the insurance company issuing the bond may not cancel,
15 substantially modify, or refuse to renew the bond without giving 30 days
16 prior written notice to the board of directors of the community association,
17 except in the case of nonpayment of premiums, in which case 10 days prior
18 written notice shall be given to the board of directors.

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

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

23 **"§ 93A-30.8. Contracts for broker services.**

24 Every contract entered into by a licensed broker and a community association to provide
25 community association property management services shall be in writing and contain each of
26 the following conditions:

27 (1) The contract shall expire one year from the date the contract is entered into.
28 However, the contract may contain a clause to permit the contract to
29 continue on a month-to-month basis upon the expiration of the original term.

30 (2) The contract shall contain an "escape clause."

31 (3) The contract shall contain a notice of cancellation with proper notice before
32 the expiration of the contract and prior to contract renewal.

33 **"§ 93A-30.9. Registration of community associations.**

34 (a) Each community association shall register with the Commission annually. The
35 Commission shall provide the proper form for registration. To register, a community
36 association shall provide the following:

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

38 (2) The names, addresses, and phone numbers of members of the community
39 association's board of directors.

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

41 (4) The name of the licensee broker who has control of the funds of the
42 community association.

43 (5) The name of the community association property manager's bond company
44 or insurance company.

45 (6) Any other information the Commission deems necessary.

46 (b) The registration form shall be accompanied by a certified check for a fee in the
47 amount of one hundred dollars (\$100.00) to cover the cost of registration, education, and
48 advising the community associations on matters related to the real estate functions of a
49 community association or any changes to the registration.

1 (c) The community association shall be required to make any corrections or
2 modifications to the original information provided in the registration to the Commission within
3 15 days from the date of registration."

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