

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 330
Mar 18, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH30181-LM-71A (02/27)

Short Title: Planned Community Act/Declarant Rights. (Public)

Sponsors: Representatives Bryan and Stam (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE NORTH CAROLINA PLANNED COMMUNITY ACT
3 REGARDING THE TRANSFER OF SPECIAL DECLARANT RIGHTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 47F-1-102 reads as rewritten:

6 "§ 47F-1-102. Applicability.

7 ...

8 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1)
9 through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive
10 board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community;
11 responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and
12 suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings),
13 G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments),
14 G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and
15 political sign displays)displays), and G.S. 47F-3-104 (Transfer of Special Declarant Rights)
16 apply to all planned communities created in this State before January 1, 1999, unless the
17 articles of incorporation or the declaration expressly provides to the contrary, and
18 G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities
19 created in this State before January 1, 1999. These sections apply only with respect to events
20 and circumstances occurring on or after January 1, 1999, and do not invalidate existing
21 provisions of the declaration, bylaws, or plats and plans of those planned communities.
22 G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State
23 before January 1, 1999, to the extent necessary in construing any of the preceding sections.

24"

25 SECTION 2. G.S. 47F-1-103 reads as rewritten:

26 "§ 47F-1-103. Definitions.

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

- 29 (1) "Affiliate of declarant" means any person who controls, is controlled by, or
30 is under common control with a declarant. A person "controls" a declarant if
31 the person (i) is a general partner, officer, director, or employer of the
32 declarant; (ii) directly or indirectly or acting in concert with one or more
33 other persons, or through one or more subsidiaries, owns, controls, holds
34 with power to vote, or holds proxies representing more than twenty percent
35 (20%) of the voting interest in the declarant; (iii) controls in any manner the



election of a majority of the directors of the declarant; or (iv) 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.

...
(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 lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community.

...."

SECTION 3. G.S. 47F-3-104 reads as rewritten:

"§ 47F-3-104. Transfer of special declarant rights.

(a) Except for transfer of declarant rights pursuant to foreclosure, no No special declarant right (G.S. 47F-1-103(28)) defined under this Chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

- (1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any lot owner of standing to maintain an action to enforce any obligation of the transferor.
- (2) If a successor to any special declarant right is an affiliate of a declarant (G.S. 47F-1-103(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the planned community.
- (3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this Chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of any lots owned by a declarant, or real estate in a planned community subject to development rights, or real estate subject to development rights for a planned community, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded in every county in which any

1 portion of the planned community is located, succeeds to all special declarant rights
2 (G.S. 47F-1-103(28)) related to that property held by that declarant, or only to any rights
3 reserved in the declaration and held by that declarant to maintain sales offices, management
4 offices, signs advertising the planned community, and models. The judgment or instrument
5 conveying title shall provide for transfer of only the special declarant rights requested. The
6 mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection
7 shall not be required to contain specific reference to an assignment of special declarant rights
8 but shall be deemed to include the special declarant rights as part of the right, title, and interest
9 encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

10 (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating
11 a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership
12 proceedings of all interests in a planned community owned by a declarant:

13 (1) The declarant ceases to have any special declarant rights; and

14 (2) The period of declarant control (G.S. 47F-3-103(d)) terminates unless (i) the
15 judgment or instrument conveying title provides for transfer of all special
16 declarant rights held by that declarant to a successor declarant or (ii) the
17 declarant transferred special declarant rights related to the appointment of
18 executive board members to another person pursuant to this section prior to
19 the foreclosure or sale.

20 (e) The liabilities and obligations of a person who succeeds to special declarant rights
21 are as follows:

22 (1) A successor to any special declarant right who is an affiliate of a declarant is
23 subject to all obligations and liabilities imposed on the transferor by this
24 Chapter or by the declaration.

25 (2) Unless otherwise specified in the declaration as to the holder of a mortgage
26 instrument, deed of trust, or other agreement creating a security interest, in
27 case of foreclosure of a security interest, sale by a trustee under an
28 agreement creating a security interest, tax sale, judicial sale, or sale under
29 Bankruptcy Code or receivership proceedings, a successor to any special
30 declarant right, other than a successor described in subdivision (3) or (4) of
31 this subsection or a successor who is an affiliate of a declarant, is subject to
32 the obligations and liabilities imposed by this Chapter or the declaration:

33 a. On a declarant which relate to the successor's exercise or nonexercise
34 of special declarant rights; or

35 b. On his transferor, other than:

36 1. Misrepresentations by any previous declarant;

37 2. Warranty obligations on improvements made by any previous
38 declarant or made before the planned community was created;

39 3. Breach of any fiduciary obligation by any previous declarant
40 or his appointees to the executive board; or

41 4. Any liability or obligation imposed on the transferor as a
42 result of the transferor's acts or omissions after the transfer.

43 (3) A successor to only a right reserved in the declaration to maintain sales
44 offices, management offices, signs advertising the planned community, and
45 models, if the successor is not an affiliate of the declarant, may not exercise
46 any other special declarant right and is not subject to any liability or
47 obligation as a declarant.

48 (4) A successor to all special declarant rights held by a transferor who is not an
49 affiliate of the declarant who succeeded to those rights pursuant to a deed or
50 other instrument of conveyance in lieu of foreclosure or a judgment or
51 instrument conveying title under subsection (c) of this section may declare in

1 a recorded instrument the intention to hold those rights solely for transfer to
2 another person. Thereafter, until transferring all special declarant rights to
3 any person acquiring title to any lot or real estate subject to development
4 rights owned by the successor, or until recording an instrument permitting
5 exercise of all those rights, that successor may not exercise any of those
6 rights other than any right held by his transferor to control the executive
7 board in accordance with G.S. 47F-3-103(d) for the duration of any period of
8 declarant control, and any attempted exercise of those rights is void. So long
9 as a successor declarant may not exercise special declarant rights under this
10 subsection, the successor declarant is not subject to any liability or
11 obligation as a declarant other than liability for his acts and omissions under
12 G.S. 47F-3-103(d).

13 (f) Nothing in this section subjects any successor to a special declarant right to any
14 claims against or other obligations of a transferor declarant other than claims and obligations
15 arising under this Chapter or the declaration.

16 (g) For purposes of this section, "assignment of declarant rights" shall include any
17 assignment by the declarant of special declarant rights to a person, including, without
18 limitation, an assignment pursuant to this section."

19 **SECTION 4.** This act is effective when it becomes law. Nothing in this act shall be
20 construed as being applicable to or affecting any pending litigation.