

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

H

1

HOUSE BILL 330

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

Sponsors: Representatives Bryan and Stam (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

March 19, 2013

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

The General Assembly of North Carolina enacts:

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

"§ 47F-1-102. Applicability.

...

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

...."

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

"§ 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 controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (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 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,

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

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

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

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

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

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

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

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

36 b. On his transferor, other than:

37 1. Misrepresentations by any previous declarant;

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

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

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

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

49 (4) A successor to all special declarant rights held by a transferor who is not an
50 affiliate of the declarant who succeeded to those rights pursuant to a deed or
51 other instrument of conveyance in lieu of foreclosure or a judgment or

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

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

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

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