

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 228
Commerce Committee Substitute Adopted 3/26/13

Short Title: HOAs/Lim. Com. Elements/Amend of Declaration.

(Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A UNIT OWNER IN A CONDOMINIUM AND A LOT OWNER IN A PLANNED COMMUNITY SHALL AFFORD ACCESS THROUGH THE LIMITED COMMON ELEMENT ASSIGNED OR ALLOCATED TO THE OWNER'S UNIT OR LOT TO THE ASSOCIATION AND, WHEN NECESSARY, TO OTHER UNIT OR LOT OWNERS FOR THE PURPOSE OF CONDUCTING MAINTENANCE, REPAIR, OR REPLACEMENT ACTIVITIES AND PROVIDING THAT A UNIT OR LOT OWNER IS LEGALLY RESPONSIBLE FOR DAMAGE TO A LIMITED COMMON ELEMENT CAUSED BY THE UNIT OR LOT OWNER AND CLARIFYING THE LAWS REGARDING THE POWERS AND DUTIES OF A PLANNED COMMUNITY AND AMENDING THE PROCEDURES REGARDING AMENDMENT OF A RECORDED DECLARATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-107 reads as rewritten:

"§ 47C-3-107. Upkeep; damages; assessments for damages, fines.

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit or the limited common element assigned to his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common ~~element, element or limited common element~~, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

...."

SECTION 2. G.S. 47F-3-107 reads as rewritten:

"§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.

(a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to



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1 recover the costs of such maintenance, repair, or replacement except that the costs of
2 maintenance, repair, or replacement of a limited common element shall be assessed as provided
3 in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is
4 responsible for the maintenance and repair of his lot and any improvements thereon. Each lot
5 owner shall afford to the association and when necessary to another lot owner access through
6 the lot owner's lot or the limited common element allocated to the lot owner's lot reasonably
7 necessary for any such maintenance, repair, or replacement activity.

8 (b) If a lot owner is legally responsible for damage inflicted on any common
9 ~~element, element~~ or limited common element, the association may direct such lot owner to
10 repair such damage, or the association may itself cause the repairs to be made and recover
11 damages from the responsible lot owner.

12"

13 **SECTION 3.** G.S. 47F-1-104 reads as rewritten:

14 "**§ 47F-1-104. Variation.**

15 (a) Except as specifically provided in specific sections of this Chapter, the provisions of
16 this Chapter may not be varied by the declaration or bylaws. To the extent not inconsistent with
17 the provisions of this Chapter, the declaration, bylaws, and articles of incorporation form the
18 basis for the legal authority for the planned community to act as provided in the declaration,
19 bylaws, and articles of incorporation, and the declaration, bylaws, and articles of incorporation
20 are enforceable by their terms.

21"

22 **SECTION 4.** G.S. 47F-2-103 reads as rewritten:

23 "**§ 47F-2-103. Construction and validity of declaration and bylaws.**

24 (a) To the extent not inconsistent with the provisions of this Chapter, the declaration,
25 bylaws, and articles of incorporation form the basis for the legal authority for the planned
26 community to act as provided in the declaration, bylaws, and articles of incorporation, and the
27 declaration, bylaws, and articles of incorporation are enforceable by their terms. All provisions
28 of the declaration and bylaws are severable.

29"

30 **SECTION 5.** G.S. 47F-2-117 reads as rewritten:

31 "**§ 47F-2-117. Amendment of declaration.**

32 ...

33 (d) Any amendment passed pursuant to the provisions of this section or the procedures
34 provided for in the declaration are presumed valid and enforceable.

35"

36 **SECTION 6.** G.S. 47F-1-102 reads as rewritten:

37 "**§ 47F-1-102. Applicability.**

38 ...

39 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104
40 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),
41 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through
42 (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and
43 officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and
44 assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned
45 community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments
46 for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association
47 records), and G.S. 47F-3-121 (American and State flags and political sign displays) apply to all
48 planned communities created in this State before January 1, 1999, unless the articles of
49 incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120
50 (Declaration limits on attorneys' fees) applies to all planned communities created in this State
51 before January 1, 1999. These sections apply only with respect to events and circumstances

1 occurring on or after January 1, 1999, and do not invalidate existing provisions of the
2 declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103
3 (Definitions) also applies to all planned communities created in this State before January 1,
4 1999, to the extent necessary in construing any of the preceding sections.

5"

6 **SECTION 7.** Section 5 of this act becomes effective October 1, 2013, and applies
7 to any amendment of a planned community declaration recorded on or after that date. The
8 remainder of this act is effective when it becomes law.