

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 330
PROPOSED COMMITTEE SUBSTITUTE H330-PCS30507-RN-23

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

Sponsors:

Referred to:

March 19, 2013

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

25"

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

27 "**§ 47F-1-103. Definitions.**

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

30 (1) "Affiliate of declarant" means any person who succeeds to any special
31 declarant rights and who controls, is controlled by, or is under common
32 control with a declarant. A person "controls" a declarant if the person is any
33 of the following:

34 a. A general partner, officer, director, or employer of the declarant.

35 b. Directly or indirectly or acting in concert with one or more other
36 persons, or through one or more subsidiaries, owns, controls, holds



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1 with power to vote, or holds proxies representing more than twenty
 2 percent (20%) of the voting interest in the declarant.

3 c. Controls in any manner the election of a majority of the directors of
 4 the declarant.

5 d. Has contributed more than twenty percent (20%) of the capital of the
 6 declarant.

7 A person "is controlled by" a declarant if the declarant (i) is a general
 8 partner, officer, director, or employer of the person; (ii) directly or indirectly
 9 or acting in concert with one or more other persons, or through one or more
 10 subsidiaries, owns, controls, holds with power to vote, or holds proxies
 11 representing more than twenty percent (20%) of the voting interest in the
 12 person; (iii) controls in any manner the election of a majority of the directors
 13 of the person; or (iv) has contributed more than twenty percent (20%) of the
 14 capital of the person. Control does not exist if the powers described in this
 15 subdivision are held solely as security for an obligation and are not
 16 exercised.

17 ...

18 (11) "Development rights" means any right or combination of rights reserved by a
 19 declarant in the declaration (i) to add real estate to a planned community; (ii)
 20 to create lots, common elements, or limited common elements within a
 21 planned community; (iii) to subdivide lots or convert lots into common
 22 elements; or (iv) to withdraw real estate from a planned community.

23"

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

25 **"§ 47F-3-104. Transfer of special declarant rights.**

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

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

33 (1) A transferor is not relieved of any obligation or liability arising before the
 34 transfer and remains liable for warranty obligations imposed upon the
 35 transferor by this Chapter. Lack of privity does not deprive any lot owner of
 36 standing to maintain an action to enforce any obligation of the transferor.

37 (2) If a successor to any special declarant right is an affiliate of a declarant
 38 (G.S. 47F-1-103(1)), the transferor is jointly and severally liable with the
 39 successor for any obligations or liabilities of the successor relating to the
 40 planned community.

41 (3) If a transferor retains any special declarant rights, but transfers other special
 42 declarant rights to a successor who is not an affiliate of the declarant, the
 43 transferor is liable for any obligations or liabilities imposed on a declarant by
 44 this Chapter or by the declaration relating to the retained special declarant
 45 rights and arising after the transfer.

46 (4) A transferor has no liability for any act or omission or any breach of a
 47 contractual or warranty obligation arising from the exercise of a special
 48 declarant right by a successor declarant who is not an affiliate of the
 49 transferor.

50 (c) Unless otherwise provided in a mortgage instrument, deed of trust, or other
 51 agreement creating a security interest, in case of foreclosure of a security interest, sale by a

1 trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under
2 Bankruptcy Code or receivership proceedings of any lots owned by a declarant, or real estate in
3 a planned community subject to development rights, or real estate subject to development rights
4 for a planned community, a person acquiring title to all the property being foreclosed or sold,
5 but only upon the person's request in an instrument recorded in every county in which any
6 portion of the planned community is located, succeeds to all special declarant rights
7 (G.S. 47F-1-103(28)) related to that property held by that declarant and requested by the person
8 acquiring title. The judgment or instrument conveying title shall provide for transfer of only the
9 special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to
10 be foreclosed under this subsection shall not be required to contain specific reference to an
11 assignment of special declarant rights but shall be deemed to include the special declarant
12 rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien,
13 or other conveyance.

14 (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating
15 a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership
16 proceedings of all interests in a planned community owned by a declarant, the declarant ceases
17 to have any special declarant rights and the period of declarant control (G.S. 47F-3-103(d))
18 terminates unless either of the following applies:

- 19 (1) The judgment or instrument conveying title provides for transfer of all
20 special declarant rights held by that declarant to a successor declarant.
21 (2) The declarant transferred special declarant rights related to the appointment
22 of executive board members to another person pursuant to this section prior
23 to the foreclosure or sale.

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

- 26 (1) A successor to any special declarant right who is an affiliate of a declarant is
27 subject to all obligations and liabilities imposed on the transferor by this
28 Chapter or by the declaration.
29 (2) Unless otherwise specified in the declaration as to the holder of a mortgage
30 instrument, deed of trust, or other agreement creating a security interest, in
31 case of foreclosure of a security interest, sale by a trustee under an
32 agreement creating a security interest, tax sale, judicial sale, or sale under
33 Bankruptcy Code or receivership proceedings, a successor to any special
34 declarant right, other than a successor described in subdivision (3) or (4) of
35 this subsection or a successor who is an affiliate of a declarant, is subject to
36 the obligations and liabilities imposed by this Chapter or the declaration:
37 a. On a declarant which relate to the successor's exercise or nonexercise
38 of special declarant rights; or
39 b. On his transferor, other than:
40 1. Misrepresentations by any previous declarant;
41 2. Warranty obligations on improvements made by any previous
42 declarant or made before the planned community was created;
43 3. Breach of any fiduciary obligation by any previous declarant
44 or his appointees to the executive board; or
45 4. Any liability or obligation imposed on the transferor as a
46 result of the transferor's acts or omissions after the transfer.
47 (3) A successor to only a right reserved in the declaration to maintain sales
48 offices, management offices, signs advertising the planned community, and
49 models, if the successor is not an affiliate of the declarant, may not exercise
50 any other special declarant right and is not subject to any liability or
51 obligation as a declarant.

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

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

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

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