

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

D

HOUSE BILL 793
Committee Substitute Favorable 5/14/13
PROPOSED COMMITTEE SUBSTITUTE H793-PCS70426-SU-31

Short Title: HOAs/Fidelity Bonds.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT CERTAIN CONDOMINIUM AND PLANNED COMMUNITY ASSOCIATIONS SHALL OBTAIN AND MAINTAIN A FIDELITY BOND INSURING THE ASSOCIATIONS FROM LOSSES RESULTING FROM THEFT OR DISHONESTY COMMITTED BY MEMBERS OF THE EXECUTIVE BOARD OR PERSONS EMPLOYED BY THE ASSOCIATIONS, PROVIDING THAT ANY MANAGEMENT AGENT OR COMPANY HIRED BY AN ASSOCIATION SHALL AT ALL TIMES BE COVERED BY A FIDELITY BOND, AND PROVIDING FINANCIAL AUDIT REQUIREMENTS FOR ASSOCIATIONS.

The General Assembly of North Carolina enacts:

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

"§ 47C-1-102. Applicability.

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Fidelity bond required; executive board; management company), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-118.1 (Financial audit requirements), 47C-3-121 (American and State flags and political sign displays), ~~and~~ 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

...."

SECTION 2. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read as follows:

"§ 47C-3-113.1. Fidelity bond required; executive board; management company.

(a) Executive Board. – Any unit owners' association with annual assessments for common expenses of one hundred thousand dollars (\$100,000) or more shall obtain and



* H 7 9 3 - P C S 7 0 4 2 6 - S U - 3 1 *

1 maintain a fidelity bond insuring the unit owners' association against losses resulting from theft
2 or dishonesty committed by the officers and members of the executive board or persons
3 employed by the unit owners' association. The bond shall provide coverage in an amount at
4 least equal to the annual operating budget of the unit owners' association, but is not required to
5 be greater than one million dollars (\$1,000,000). The executive board shall obtain the bond on
6 behalf of the unit owners' association.

7 (b) Management Agent or Company. – Any management agent or company hired by a
8 unit owners' association shall at all times be covered by a fidelity bond. For purposes of this
9 section, a management agent or company is any person who, for compensation or the
10 expectation thereof, performs two or more of the following: (i) acts with the authority of a unit
11 owners' association in its business, legal, financial, or other transactions with association
12 members and nonmembers; (ii) executes the resolutions and decisions of the government of a
13 unit owners' association or, with the authority of the association, enforces the rights of the
14 association secured by statute, contract, covenant, rule, or bylaw; (iii) collects, disburses, or
15 otherwise exercises dominion or control over money or other property belonging to a unit
16 owners' association; (iv) prepares budgets, financial statements, or other financial reports for a
17 unit owners' association; (v) negotiates contracts or otherwise coordinates or arranges for
18 services or the purchase of property and goods for or on behalf of a unit owners' association; or
19 (vi) offers or solicits to perform any of the acts or services in subdivisions (i) through (v) of this
20 subsection on behalf of a unit owners' association. The fidelity bond shall provide coverage in
21 an amount at least equal to the annual budgets of all of their clients but is not required to be
22 greater than two million dollars (\$2,000,000) and shall comply with the following conditions:

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

25 (2) Cover the unit owners' association manager and all or a portion of the
26 employees and protect all or a portion of the association funds in the custody
27 of the association manager or association employees acting under the
28 association manager's supervision.

29 (3) Provide that the insurance company issuing the bond may not cancel,
30 substantially modify, or refuse to renew the bond without giving 30 days'
31 prior written notice to the executive board, except in the case of nonpayment
32 of premiums, in which case 10 days' prior written notice shall be given to the
33 executive board.

34 (4) Contain any other provisions as may be required by the executive board."

35 **SECTION 2.5.** G.S. 47C-3-118(a) reads as rewritten:

36 "(a) The association shall keep financial records sufficiently detailed to enable the
37 association to comply with this chapter. All financial and other records, including records of
38 meetings of the association and executive board, shall be made reasonably available for
39 examination by any unit owner and the unit owner's authorized agents as required by the
40 bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation.
41 If the bylaws do not specify particular records to be maintained, the association shall keep
42 accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to
43 any specific information that is required by the bylaws to be assembled and reported to the unit
44 owners at specified times, the association shall make an annual income and expense statement
45 and balance sheet available to all unit owners at no charge and within 75 days after the close of
46 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~
47 ~~compilation, review, or audit of the association's books and records for the current or~~
48 ~~immediately preceding fiscal year may be required by a vote of the majority of the executive~~
49 ~~board or by the affirmative vote of a majority of the unit owners present and voting in person or~~
50 ~~by proxy at any annual meeting or any special meeting duly called for that purpose."~~

1 SECTION 3. Article 3 of Chapter 47C of the General Statutes is amended by
2 adding a new section to read as follows:

3 **"§ 47C-3-118.1. Financial audit requirements.**

4 (a) The executive board shall provide for an annual independent financial audit of the
5 unit owners' association if any of the following conditions are met:

6 (1) The declaration, bylaws, or other governing documents expressly require
7 conducting an annual financial audit.

8 (2) The unit owners' association has annual revenues or expenditures of two
9 hundred fifty thousand dollars (\$250,000) or more.

10 (3) An audit is requested by a vote of a majority of the board or by a vote of a
11 majority of the unit owners present and voting in person or by proxy at any
12 annual meeting or any special meeting duly called for that purpose.

13 The audit shall be completed no later than one year after the end of the fiscal year of the
14 unit owners' association and shall be made available upon request to the unit owners within 30
15 days after its completion.

16 (b) Except as provided in subsection (a) of this section, if the unit owners' association
17 has annual revenues or expenditures of at least one hundred fifty thousand dollars (\$150,000),
18 the executive board shall provide for an annual independent financial review of the unit owners'
19 association. The review shall be completed no later than one year after the end of the fiscal year
20 of the unit owners' association and shall be made available upon request to the unit owners
21 within 30 days after its completion."

22 SECTION 4. G.S. 47F-1-102 reads as rewritten:

23 **"§ 47F-1-102. Applicability.**

24 ...

25 (c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1)
26 through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive
27 board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community;
28 responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and
29 suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings),
30 G.S. 47F-3-113.1 (Fidelity bond required; executive board; management company),
31 G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments),
32 G.S. 47F-3-118 (Association records), G.S. 47F-3-118.1 (Financial audit requirements), and
33 G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned
34 communities created in this State before January 1, 1999, unless the articles of incorporation or
35 the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on
36 attorneys' fees) applies to all planned communities created in this State before January 1, 1999.
37 These sections apply only with respect to events and circumstances occurring on or after
38 January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats
39 and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all
40 planned communities created in this State before January 1, 1999, to the extent necessary in
41 construing any of the preceding sections.

42 "

43 SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by
44 adding a new section to read as follows:

45 **"§ 47F-3-113.1. Fidelity bond required; executive board; management company.**

46 (a) Executive Board. – Any association with annual assessments for common expenses
47 of one hundred thousand dollars (\$100,000) or more shall obtain and maintain a fidelity bond
48 insuring the association against losses resulting from theft or dishonesty committed by the
49 officers and members of the executive board or persons employed by the association. The bond
50 shall provide coverage in an amount at least equal to the annual operating budget of the

1 association, but is not required to be greater than one million dollars (\$1,000,000). The
2 executive board shall obtain the bond on behalf of the association.

3 (b) Management Agent or Company. – Any management agent or company hired by an
4 association shall at all times be covered by a fidelity bond. For purposes of this section, a
5 management agent or company is any person who, for compensation or the expectation thereof,
6 performs two or more of the following: (i) acts with the authority of an association in its
7 business, legal, financial, or other transactions with association members and nonmembers; (ii)
8 executes the resolutions and decisions of the government of an association or, with the
9 authority of the association, enforces the rights of the association secured by statute, contract,
10 covenant, rule, or bylaw; (iii) collects, disburses, or otherwise exercises dominion or control
11 over money or other property belonging to an association; (iv) prepares budgets, financial
12 statements, or other financial reports for an association; (v) negotiates contracts or otherwise
13 coordinates or arranges for services or the purchase of property and goods for or on behalf of
14 an association; or (vi) offers or solicits to perform any of the acts or services in subdivisions (i)
15 through (v) of this subsection on behalf of an association. The bond shall provide coverage in
16 an amount at least equal to the annual budgets of all of their clients but is not required to be
17 greater than two million dollars (\$2,000,000) and shall comply with the following conditions:

- 18 (1) Be written by an insurance company authorized to write fidelity bonds in
19 this State.
- 20 (2) Cover the association manager and all or a portion of the employees and
21 protect all or a portion of the association funds in the custody of the
22 association manager or association employees acting under the association
23 manager's supervision.
- 24 (3) Provide that the insurance company issuing the bond may not cancel,
25 substantially modify, or refuse to renew the bond without giving 30 days'
26 prior written notice to the executive board, except in the case of nonpayment
27 of premiums, in which case 10 days' prior written notice shall be given to the
28 executive board.
- 29 (4) Contain any other provisions as may be required by the executive board."

30 **SECTION 5.5.** G.S. 47F-3-118(a) reads as rewritten:

31 "(a) The association shall keep financial records sufficiently detailed to enable the
32 association to comply with this Chapter. All financial and other records, including records of
33 meetings of the association and executive board, shall be made reasonably available for
34 examination by any lot owner and the lot owner's authorized agents as required in the bylaws
35 and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be
36 maintained, the association shall keep accurate records of all cash receipts and expenditures and
37 all assets and liabilities. In addition to any specific information that is required by the bylaws to
38 be assembled and reported to the lot owners at specified times, the association shall make an
39 annual income and expense statement and balance sheet available to all lot owners at no charge
40 and within 75 days after the close of the fiscal year to which the information relates.
41 ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's~~
42 ~~books and records for the current or immediately preceding fiscal year may be required by a~~
43 ~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot~~
44 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
45 ~~duly called for that purpose."~~

46 **SECTION 6.** Article 3 of Chapter 47F of the General Statutes is amended by
47 adding a new section to read as follows:

48 **"§ 47F-3-118.1. Financial audit requirements.**

49 (a) The executive board shall provide for an annual independent financial audit of the
50 association if any of the following conditions are met:

- 1 (1) The declaration, bylaws, or other governing documents expressly require
2 conducting an annual financial audit.
- 3 (2) The association has annual revenues or expenditures of two hundred fifty
4 thousand dollars (\$250,000) or more.
- 5 (3) An audit is requested by a vote of a majority of the board or by a vote of a
6 majority of the lot owners present and voting in person or by proxy at any
7 annual meeting or any special meeting duly called for that purpose.

8 The audit shall be completed no later than one year after the end of the fiscal year of the
9 association and shall be made available upon request to the lot owners within 30 days after its
10 completion.

11 (b) Except as provided in subsection (a) of this section, if the association has annual
12 revenues or expenditures of at least one hundred fifty thousand dollars (\$150,000), the
13 executive board shall provide for an annual independent financial review of the association.
14 The review shall be completed no later than one year after the end of the fiscal year of the
15 association and shall be made available upon request to the lot owners within 30 days after its
16 completion."

17 **SECTION 7.** This act becomes effective October 1, 2013.