

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

D

HOUSE BILL 793
Committee Substitute Favorable 5/14/13
Committee Substitute #2 Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H793-PCS10416-SU-33

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.



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

1 (a) Executive Board. – Any unit owners' association with annual assessments for
2 common expenses of one hundred thousand dollars (\$100,000) or more shall obtain and
3 maintain a fidelity bond insuring the unit owners' association against losses resulting from theft
4 or dishonesty committed by the officers and members of the executive board or persons
5 employed by the unit owners' association. The bond shall provide coverage in an amount at
6 least equal to the annual operating budget of the unit owners' association, but is not required to
7 be greater than one million dollars (\$1,000,000). The executive board shall obtain the bond on
8 behalf of the unit owners' association.

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

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

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

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

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

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

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

1 board or by the affirmative vote of a majority of the unit owners present and voting in person or
2 by proxy at any annual meeting or any special meeting duly called for that purpose."

3 **SECTION 4.** Article 3 of Chapter 47C of the General Statutes is amended by
4 adding a new section to read as follows:

5 **"§ 47C-3-118.1. Financial audit requirements.**

6 (a) The executive board shall provide for an annual independent financial audit
7 conducted by a certified public accountant licensed pursuant to Chapter 93 of the General
8 Statutes of the unit owners' association if any of the following conditions are met:

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

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

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

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

19 (b) Except as provided in subsection (a) of this section, if the unit owners' association
20 has annual revenues or expenditures of at least one hundred fifty thousand dollars (\$150,000),
21 the executive board shall provide for an annual independent financial review conducted by a
22 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the unit
23 owners' association. The review shall be completed no later than one year after the end of the
24 fiscal year of the unit owners' association and shall be made available upon request to the unit
25 owners within 30 days after its completion."

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

27 **"§ 47F-1-102. Applicability.**

28 ...

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

46"

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

49 **"§ 47F-3-113.1. Fidelity bond required; executive board; management company.**

50 (a) Executive Board. – Any association with annual assessments for common expenses
51 of one hundred thousand dollars (\$100,000) or more shall obtain and maintain a fidelity bond

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

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

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

33 **SECTION 7.** G.S. 47F-3-118(a) reads as rewritten:

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

49 **SECTION 8.** Article 3 of Chapter 47F of the General Statutes is amended by
50 adding a new section to read as follows:

51 **"§ 47F-3-118.1. Financial audit requirements.**

1 (a) The executive board shall provide for an annual independent financial audit
2 conducted by a certified public accountant licensed pursuant to Chapter 93 of the General
3 Statutes of the association if any of the following conditions are met:

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

6 (2) The association has annual revenues or expenditures of two hundred fifty
7 thousand dollars (\$250,000) or more.

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

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

14 (b) Except as provided in subsection (a) of this section, if the association has annual
15 revenues or expenditures of at least one hundred fifty thousand dollars (\$150,000), the
16 executive board shall provide for an annual independent financial review conducted by a
17 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the
18 association. The review shall be completed no later than one year after the end of the fiscal year
19 of the association and shall be made available upon request to the lot owners within 30 days
20 after its completion."

21 **SECTION 9.** This act becomes effective October 1, 2013.