

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH30264-MQfqa-81 (03/30)

Short Title: Community Assn. Commission/Fidelity Bonds. (Public)

Sponsors: Representatives Saine and Jeter (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A FIDELITY BOND REQUIREMENT FOR COMMUNITY
3 ASSOCIATIONS AND TO CREATE THE NORTH CAROLINA COMMUNITY
4 ASSOCIATION COMMISSION TO REGULATE COMMUNITY ASSOCIATIONS AND
5 COMMUNITY ASSOCIATION MANAGERS IN THIS STATE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 47C-1-102(a) reads as rewritten:

8 **"§ 47C-1-102. Applicability.**

9 (a) This Chapter applies to all condominiums created within this State after October 1,
10 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local
11 Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103
12 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units),
13 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11)
14 through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and
15 officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or
16 services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112
17 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Fidelity bond required;
18 executive board; management company), 47C-3-116 (Lien for Assessments), 47C-3-118
19 (Association Records), 47C-3-118.1 (Financial audit requirements), 47C-3-121 (American and
20 State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action;
21 Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of
22 those sections, apply to all condominiums created in this State on or before October 1, 1986,
23 unless the declaration expressly provides to the contrary. Those sections apply only with
24 respect to events and circumstances occurring after October 1, 1986, and do not invalidate
25 existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

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

28 **"§ 47C-3-113.1. Fidelity bond required; executive board; management company.**

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



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

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

19 (2) Cover the unit owners' association manager and all or a portion of the
20 employees and protect all or a portion of the association funds in the custody
21 of the association manager or association employees acting under the
22 association manager's supervision.

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

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

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

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

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

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

48 **(a)** The executive board shall provide for an annual independent financial audit
49 conducted by a certified public accountant, licensed pursuant to Chapter 93 of the General
50 Statutes, of the unit owners' 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 unit owners' association has annual revenues or expenditures of two
4 hundred fifty 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 unit 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 unit owners' association and shall be made available upon request to the unit owners within 30
10 days after its completion.

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

18 **SECTION 5.** Article 3 of Chapter 47C of the General Statutes is amended by
19 adding a new section to read:

20 "**§ 47C-3-120. Registration with North Carolina Community Association Commission.**

21 Beginning January 1, 2016, the association shall annually register with the North Carolina
22 Community Association Commission pursuant to Chapter 93F of the General Statutes."

23 **SECTION 6.** G.S. 47F-1-102(c) reads as rewritten:

24 "(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104
25 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws),
26 G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through
27 (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and
28 officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and
29 assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned
30 community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-113.1 (Fidelity
31 bond required; executive board; management company), G.S. 47F-3-115 (Assessments for
32 common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association
33 records), G.S. 47F-3-118.1 (Financial audit requirements), and G.S. 47F-3-121 (American and
34 State flags and political sign displays), and G.S. 47F-3-104 (Transfer of Special Declarant
35 Rights) apply to all planned communities created in this State before January 1, 1999, unless
36 the articles of incorporation or the declaration expressly provides to the contrary, and
37 G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities
38 created in this State before January 1, 1999. These sections apply only with respect to events
39 and circumstances occurring on or after January 1, 1999, and do not invalidate existing
40 provisions of the declaration, bylaws, or plats and plans of those planned communities.
41 G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State
42 before January 1, 1999, to the extent necessary in construing any of the preceding sections."

43 **SECTION 7.** Article 3 of Chapter 47F of the General Statutes is amended by
44 adding a new section to read:

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 clauses (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 8.** Article 3 of Chapter 47F of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 47F-3-117. Registration with North Carolina Community Association Commission.**

33 Beginning January 1, 2016, the association shall annually register with the North Carolina
34 Community Association Commission pursuant to Chapter 93F of the General Statutes.

35 **SECTION 9.** G.S. 47F-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 lot owner and the lot owner's authorized agents as required in the bylaws
40 and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be
41 maintained, the association shall keep accurate records of all cash receipts and expenditures and
42 all assets and liabilities. In addition to any specific information that is required by the bylaws to
43 be assembled and reported to the lot owners at specified times, the association shall make an
44 annual income and expense statement and balance sheet available to all lot owners at no charge
45 and within 75 days after the close of the fiscal year to which the information relates.
46 ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's~~
47 ~~books and records for the current or immediately preceding fiscal year may be required by a~~
48 ~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot~~
49 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
50 ~~duly called for that purpose."~~

1 f. Offers or solicits to perform any of the acts or services in
2 sub-subdivisions a. through e. of this subdivision on behalf of an
3 association.

4 **"§ 93F-2. Commission established; composition; terms.**

5 (a) There is hereby established the North Carolina Community Association
6 Commission. The Commission shall consist of five members. The composition of the
7 Commission shall be as follows:

8 (1) Two members shall be appointed by the General Assembly upon the
9 recommendation of the President Pro Tempore of the Senate.

10 (2) Two members shall be appointed by the General Assembly upon the
11 recommendation of the Speaker of the House of Representatives.

12 (3) One member shall be appointed by the Governor.

13 (b) Commissioners shall be appointed for four-year staggered terms. Each
14 Commissioner shall hold office until July 1 of the year in which the Commission member's
15 respective term expires and shall serve until the Commissioner's successor is appointed.
16 Appointments made by the General Assembly shall be made in accordance with G.S. 120-121.

17 The initial members of the Commission shall be appointed on or before October 1, 2015. Of
18 the Commissioners initially appointed, the Commissioner appointed by the Governor shall
19 serve a two-year term, to expire July 1, 2017. The Commissioners appointed by the General
20 Assembly upon the recommendation of the President Pro Tempore of the Senate and the
21 Speaker of the House of Representatives shall serve three-year terms, to expire July 1, 2018.

22 Upon the expiration of the terms of the initial members of the Commission, Commissioners
23 shall be appointed by the appointing authorities designated in subsection (a) of this section for a
24 term of four years and shall serve until a successor is appointed.

25 (c) All vacancies from unexpired terms shall be filled by the authority originally filling
26 that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and
27 until a successor has been appointed.

28 (d) The Commission may remove any of its members for neglect of duty,
29 incompetence, or unprofessional conduct.

30 **"§ 93F-3. Meetings; election of officers; compensation.**

31 The Commission shall hold at least four meetings annually, and three members of the
32 Commission shall constitute a quorum for the transaction of business. Additional meetings may
33 be held at other times within the State as may be necessary for the efficient transaction of the
34 business of the Commission. The Commission may hold additional or special meetings at any
35 time at the call of the chairman or on the call of any three members of the Commission.

36 At the first scheduled meeting of the Commission after October 1, 2015, and on July 1 of
37 each odd-numbered year thereafter, the Commission shall select from among its membership a
38 chairman and a vice-chairman who shall serve for terms of two years or until their successors
39 are elected.

40 Each member of the Commission shall receive per diem and reimbursement for travel and
41 subsistence as provided in G.S. 93B-5.

42 **"§ 93F-4. Powers and duties of the Commission.**

43 The Commission shall have the power and duty to do all of the following:

44 (1) Administer the provisions of this Chapter.

45 (2) Adopt rules as may be necessary to carry out the provisions of this Chapter.

46 (3) Determine the qualifications of applicants for licensure and license renewal.

47 (4) Create educational and training programs for community associations and
48 community association managers.

49 (5) Receive and investigate complaints pertaining to the acts or omissions of
50 community associations and community association managers.

- 1 (6) Employ and discharge an executive director and other professional, clerical,
2 and special personnel and to set the compensation and benefits for those
3 persons.
- 4 (7) Purchase or rent office space, equipment, and supplies necessary to carry out
5 the provisions of this Chapter.
- 6 (8) Adopt a seal by which it shall authenticate its proceedings, official
7 documents, and licenses.
- 8 (9) Conduct administrative hearings in accordance with Article 3A of Chapter
9 150B of the General Statutes.
- 10 (10) Establish fees as allowed by this Chapter.
- 11 (11) Issue, renew, deny, suspend, and revoke licenses pursuant to this Chapter.
- 12 (12) Call upon the Attorney General to provide legal counsel and representation
13 to the Commission or, upon the approval of the Attorney General, hire
14 another attorney to represent the Commission, provided that the cost of legal
15 representation is borne by the Commission.

16 **"§ 93F-5. License required.**

17 On or after January 1, 2016, it shall be unlawful for any person or business entity in this
18 State to act as a community association manager, directly or indirectly engage in the business
19 of community association management, or hold themselves out or use the title "Community
20 Association Manager," or any variation thereof, without first obtaining a community
21 association manager license issued by the Commission pursuant to this Chapter. A license from
22 the Commission is required even if the person or business entity is licensed in another state or
23 is affiliated or associated with another community association manager licensed in this State.

24 **"§ 93F-6. Requirements for licensure.**

25 To be licensed as a community association manager, an applicant shall make written
26 application in the form and manner prescribed by the Commission. The Commission shall issue
27 a license to an applicant that satisfies all of the following requirements:

- 28 (1) The applicant must be at least 18 years of age.
- 29 (2) The applicant must demonstrate to the satisfaction of the Commission that
30 the applicant possesses the knowledge, skill, competency, and training
31 needed to perform the functions of a community association manager.
- 32 (3) The applicant must satisfactorily meet the training standards established by
33 the Commission.
- 34 (4) The applicant shall pay a fee in an amount to be established by the
35 Commission not to exceed three hundred dollars (\$300.00). In addition to
36 the application fee, the applicant may be required to pay a fee for a license
37 examination not to exceed the actual cost of administering the examination.
- 38 (5) The applicant shall provide to the Commission evidence of coverage by a
39 fidelity bond required by G.S. 47C-3-113.1(b) or G.S. 47F-3-113.1(b).
- 40 (6) Any other requirement as determined by the Commission.

41 **"§ 93F-7. Expiration and renewal of license; reinstatement.**

42 (a) All licenses issued by the Commission pursuant to this Chapter shall expire one year
43 after the date of issuance. A license may be renewed 45 days prior to its expiration by
44 submitting an application in a form prescribed by the Commission, a renewal fee, and evidence
45 of coverage by a fidelity bond as required by G.S. 47C-3-113.1(b) or G.S. 47F-3-113.1(b). The
46 license renewal fee shall be in an amount established by the Commission not to exceed two
47 hundred dollars (\$200.00).

48 (b) An expired license may be reinstated by submitting the application and evidence of
49 coverage by a fidelity bond as provided in subsection (a) of this section, along with a
50 reinstatement fee in an amount established by the Commission not to exceed two hundred fifty
51 dollars (\$250.00). The Commission may, in its discretion, consider licensees who fail to renew

1 licensure within six months of expiration as not having been previously licensed and subject to
2 the provisions of this Chapter relating to the issuance of an original license.

3 **"§ 93F-8. License is property of the Commission; display of license; address change**
4 **reporting.**

5 (a) A license issued by the Commission is the property of the Commission. If the
6 Commission suspends or revokes a license, the licensee shall return the license to the
7 Commission upon demand.

8 (b) A community association manager licensed by the Commission shall display the
9 license in a manner prescribed by the Commission. All changes of address for licensees shall be
10 reported to the Commission within 10 days of the change.

11 **"§ 93F-9. Register of applicants and roster of community association managers.**

12 The chairman of the Commission shall keep a current roster showing the names and places
13 of business of all licensed community association managers, which roster shall be kept on file
14 in the office of the Commission and be open to public inspection.

15 **"§ 93F-10. Registration of community associations.**

16 (a) Beginning January 1, 2016, and thereafter annually, every community association
17 shall register the association with the Commission and shall provide the Commission with all of
18 the following information:

19 (1) The name, address, and contact information for the community association.

20 (2) The names, addresses, e-mail addresses, and telephone numbers for each of
21 the members of the community association's board of directors.

22 (3) The name and address of the agent for service of process for the community
23 association.

24 (4) The county or counties where the property governed by the community
25 association is located.

26 (5) The name, address, e-mail address, and telephone number of the community
27 association's manager or management company, if any.

28 (6) Any other information the Commission may require by rule.

29 (b) The registration process and registration system shall be established in a manner
30 prescribed by the Commission by rule. The fee for annual registration, which must accompany
31 each annual registration, shall not exceed one hundred dollars (\$100.00).

32 (c) Each community association required to register annually shall make any updates,
33 corrections, or modifications to the information provided in the most recent registration with
34 the Commission within 15 days from the date of any change.

35 (d) The Commission shall create, maintain, and make available to the public a directory
36 of registered community associations containing information about each association collected
37 as part of the registration.

38 (e) The Commission shall establish a process to receive and investigate complaints
39 pertaining to acts or omissions of community associations operating in this State.

40 **"§ 93F-11. Disciplinary action by the Commission; injunctions.**

41 (a) The Commission shall have the authority to take disciplinary action. Upon its own
42 initiative or upon the complaint of any person, the Commission may investigate the actions of
43 any person or entity licensed or registered under this Chapter, or any other person or entity who
44 shall assume to act in such capacity. If the Commission finds probable cause that a licensee or
45 registrant has violated any of the provisions of this Chapter, the Commission may hold a
46 hearing on the allegations of misconduct under Article 3A of Chapter 150B of the General
47 Statutes.

48 (b) The Commission may suspend or revoke a license issued pursuant to this Chapter or
49 reprimand a licensee if, following a hearing, the Commission adjudges the licensee to be guilty
50 of any of the following:

- 1 (1) Making any willful or negligent misrepresentation or any willful or negligent
2 omission of material fact.
- 3 (2) Pursuing a course of misrepresentation or making of false promises through
4 employees, advertising, or otherwise.
- 5 (3) Engaging in gross negligence or gross incompetence as a community
6 association manager.
- 7 (4) Acting in contravention of the declaration or bylaws of a community
8 association.
- 9 (5) Engaging in any act or service for which an active community association
10 manager license is required with an expired or inactive license.
- 11 (6) Failing, within a reasonable time, to account for or remit any monies
12 belonging to a community association or others coming into the community
13 association manager's possession in his or her capacity as a community
14 association manager.
- 15 (7) Commingling funds belonging to one community association with funds
16 belonging to another community association or with money belonging to the
17 community association manager or failure to maintain, deposit, or safeguard
18 the money of a community association.
- 19 (8) Being unworthy or incompetent to act as a community association manager
20 by acting in a manner as to endanger the interest of the public.
- 21 (9) Paying or offering to pay valuable consideration to any person or entity for
22 acts or services performed in violation of this Chapter.
- 23 (10) Any other conduct which constitutes improper, fraudulent, or dishonest
24 dealing.
- 25 (11) Violating any rule adopted by the Commission or any provision of this
26 Chapter or aiding and abetting any person or entity in such a violation.

27 (c) The Commission may appear in its own name in superior court in actions for
28 injunctive relief, a restraining order, or other appropriate action to prevent any person or entity
29 from violating the provisions of this Chapter or rules adopted by the Commission. The superior
30 court shall have the power to grant injunctive relief even if criminal prosecution has been or
31 may be instituted as a result of the violations and regardless of whether the person or entity is a
32 registrant or licensee of the Commission."

33 **SECTION 12.** There is appropriated from the General Fund to the North Carolina
34 Community Association Commission created by this act the sum of two hundred fifty thousand
35 dollars (\$250,000) in nonrecurring funds for the 2015-2016 fiscal year for the purpose of
36 start-up and establishment of the Commission.

37 **SECTION 13.** Section 11 and Section 12 are effective when this act becomes law.
38 The remainder of this act becomes effective January 1, 2016.