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SENATE BILL DRS15111-MQ-86 (03/16)

Short Title: HOA/Condo Crime & Fidelity Insurance Policies. (Public)

Sponsors: Senator Sanderson (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HOMEOWNERS ASSOCIATIONS, CONDOMINIUM ASSOCIATIONS, AND THEIR MANAGEMENT COMPANIES TO ACQUIRE CRIME AND FIDELITY INSURANCE POLICIES TO PROTECT THE ASSOCIATIONS' MEMBERSHIP FROM LOSS DUE TO THE ILLEGAL CONDUCT OF THE ASSOCIATION, THE EXECUTIVE BOARD AND ITS EMPLOYEES, OR A MANAGEMENT COMPANY, AND TO REQUIRE ANNUAL FINANCIAL AUDITS TO BE PERFORMED BY HOMEOWNERS ASSOCIATIONS AND CONDOMINIUM 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 (Crime and Fidelity Policy Required), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 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:

"§ 47C-3-113.1. Crime and fidelity policy required.

(a) Executive Board Coverage. – Any unit owners' association with annual assessments for common expenses of at least twenty-five thousand dollars (\$25,000) or with twenty-five thousand dollars (\$25,000) or more of total funds invested or on deposit shall obtain and



1 maintain, to the extent available, a crime and fidelity insurance policy. The crime and fidelity
2 insurance policy shall insure the unit owners' association against losses resulting from theft or
3 dishonesty committed by the officers and members of the executive board, members of
4 association committees, past and present, and persons employed by the unit owners'
5 association. The crime and fidelity policy shall be written by an insurance company authorized
6 to write a crime and fidelity policy in the State and shall provide coverage in the amount of one
7 hundred twenty-five percent (125%) of the total funds on deposit or invested by the executive
8 board plus one hundred twenty-five percent (125%) of the annual budget of the unit owners'
9 association as of the last day of the association's last fiscal year, but is not required to be greater
10 than one million dollars (\$1,000,000). The executive board shall obtain the crime and fidelity
11 policy on behalf of the unit owners' association.

12 (b) Management Agent or Company Coverage. – Any management agent or company
13 hired by a unit owners' association shall at all times be covered by a crime and fidelity
14 insurance policy. For purposes of this section, a management agent or company is any person
15 who, for compensation or the expectation thereof, performs two or more of the following:

- 16 (1) Acts with the authority of a unit owners' association in its business, legal,
17 financial, or other transactions with association members and nonmembers.
- 18 (2) Executes the resolutions and decisions of the government of a unit owners'
19 association or, with the authority of the association, enforces the rights of the
20 association secured by statute, contract, covenant, rule, or bylaw.
- 21 (3) Collects, disburses, or otherwise exercises dominion or control over money
22 or other property belonging to a unit owners' association.
- 23 (4) Prepares budgets, financial statements, or other financial reports for a unit
24 owners' association.
- 25 (5) Negotiates contracts or otherwise coordinates or arranges for services or the
26 purchase of property and goods for or on behalf of a unit owners'
27 association.
- 28 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)
29 through (5) of this subsection on behalf of a unit owners' association.

30 The crime and fidelity policy shall provide coverage in the amount of the total annual
31 budgets of all clients of the management agent or company, but is not required to be greater
32 than two million dollars (\$2,000,000). The crime and fidelity policy shall be written by an
33 insurance company authorized to write a crime and fidelity policy in this State and shall cover
34 the unit owners' association manager and all of the manager's employees and protect all or a
35 portion of the association funds in the custody of the association manager or association
36 employees acting under the association manager's supervision.

37 (c) Notice of Inability to Comply. – If the insurance policy described in this section is
38 not reasonably or commercially available, the association shall promptly each year cause notice
39 of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners."

40 **SECTION 3.** G.S. 47C-3-118 reads as rewritten:

41 **"§ 47C-3-118. Association records.**

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

1 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~
2 ~~compilation, review, or audit of the association's books and records for the current or~~
3 ~~immediately preceding fiscal year may be required by a vote of the majority of the executive~~
4 ~~board or by the affirmative vote of a majority of the unit owners present and voting in person or~~
5 ~~by proxy at any annual meeting or any special meeting duly called for that purpose.~~

6"

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

9 **"§ 47C-3-118.1. Financial audits.**

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

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

18 **"§ 47F-1-102. Applicability.**

19 ...

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

39"

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

42 **"§ 47F-3-113.1. Crime and fidelity policy required.**

43 (a) Executive Board Coverage. – Any lot owners' association with annual assessments
44 for common expenses of twenty-five thousand dollars (\$25,000) or with twenty-five thousand
45 dollars (\$25,000) or more of total funds invested or on deposit shall obtain and maintain, to the
46 extent available, a crime and fidelity insurance policy. The crime and fidelity insurance policy
47 shall insure the unit owners' association against losses resulting from theft or dishonesty
48 committed by the officers and members of the executive board, members of association
49 committees, past and present, and persons employed by the lot owners' association. The crime
50 and fidelity policy shall be written by an insurance company authorized to write a crime and
51 fidelity policy in the State and shall provide coverage in the amount of one hundred twenty-five

1 percent (125%) of the total funds on deposit or invested by the executive board plus one
 2 hundred twenty-five percent (125%) of the annual budget of the lot owners' association as of
 3 the last day of the association's last fiscal year, but is not required to be greater than one million
 4 dollars (\$1,000,000). The executive board shall obtain the crime and fidelity policy on behalf of
 5 the lot owners' association.

6 (b) Management Agent or Company Coverage. – Any management agent or company
 7 hired by a lot owners' association shall at all times be covered by a crime and fidelity insurance
 8 policy. For purposes of this section, a management agent or company is any person who, for
 9 compensation or the expectation thereof, performs two or more of the following:

- 10 (1) Acts with the authority of a lot owners' association in its business, legal,
 11 financial, or other transactions with association members and nonmembers.
- 12 (2) Executes the resolutions and decisions of the government of a lot owners'
 13 association or, with the authority of the association, enforces the rights of the
 14 association secured by statute, contract, covenant, rule, or bylaw.
- 15 (3) Collects, disburses, or otherwise exercises dominion or control over money
 16 or other property belonging to a lot owners' association.
- 17 (4) Prepares budgets, financial statements, or other financial reports for a lot
 18 owners' association.
- 19 (5) Negotiates contracts or otherwise coordinates or arranges for services or the
 20 purchase of property and goods for or on behalf of a lot owners' association.
- 21 (6) Offers or solicits to perform any of the acts or services in subdivisions (1)
 22 through (5) of this subsection on behalf of a lot owners' association.

23 The crime and fidelity policy shall provide coverage in the amount of the total annual
 24 budgets of all clients of the management agent or company, but is not required to be greater
 25 than two million dollars (\$2,000,000). The crime and fidelity policy shall be written by an
 26 insurance company authorized to write a crime and fidelity policy in this State and shall cover
 27 the lot owners' association manager and all of the manager's employees and protect all or a
 28 portion of the association funds in the custody of the association manager or association
 29 employees acting under the association manager's supervision.

30 (c) Notice of Inability to Comply. – If the insurance policy described in this section is
 31 not reasonably or commercially available, the association shall promptly each year cause notice
 32 of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners."

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

34 **"§ 47F-3-118. Association records.**

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

50"

1 **SECTION 8.** Article 3 of Chapter 47F of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 47F-3-118.1. Financial audits.**

4 The executive board shall provide for an annual independent financial audit conducted by a
5 certified public accountant licensed pursuant to Chapter 93 of the General Statutes of the
6 association if the owners' association has annual revenues or expenditures or total account
7 balances of one hundred fifty thousand dollars (\$150,000) or more. The audit shall be
8 completed no later than one year after the end of the fiscal year of the association and shall be
9 made available upon request to the lot owners within 30 days after its completion."

10 **SECTION 9.** This act becomes effective January 1, 2018. The audit requirements
11 in Section 6 and Section 8 apply to fiscal years beginning on or after the effective date of this
12 act.