

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

D

SENATE BILL 336
House Committee Substitute Favorable 10/19/21
PROPOSED HOUSE COMMITTEE SUBSTITUTE S336-PCS15339-MV-2

Short Title: Condo Act/Restitut'n/Market.Title Act Changes.

(Public)

Sponsors:

Referred to:

March 24, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CERTAIN INFORMATION TO BE INCLUDED IN
3 DECLARATIONS FOR CONDOMINIUMS PRIOR TO RECORDATION, TO CLARIFY
4 THE APPLICABILITY OF THE NORTH CAROLINA CONDOMINIUM ACT, TO
5 REQUIRE RESTITUTION FOR SEXUAL EXPLOITATION OF A MINOR, AND TO
6 CLARIFY EXEMPTIONS FROM THE MARKETABLE TITLE ACT.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. INFORMATION TO BE INCLUDED IN DECLARATIONS FOR**
10 **CONDOMINIUMS PRIOR TO RECORDATION**

11 **SECTION 1.(a)** G.S. 47C-2-105 reads as rewritten:

12 **"§ 47C-2-105. Contents of declaration.**

13 (a) The declaration for a condominium must contain all of the following:

14 ...

15 (5) A description, by reference to the plats or plans described in G.S. 47C-2-109,
16 of the boundaries of each unit created by the declaration, including the unit's
17 identifying number. A declaration may define a unit to include all or any
18 portion of the airspace or subterranean space between two legally identifiable
19 elevations, to include or exclude the surface of a legally described parcel of
20 real property, to include or exclude airspace lying above and subterranean
21 space lying below such surface, and to mean any specified combination of the
22 foregoing, whether or not contiguous. A unit that is not specifically described
23 by an upper limiting boundary with reference to established datum shall be
24 deemed to include so much of the land and air above the unit as would be
25 attributed to a noncondominium parcel of land under the common or statutory
26 law applicable to such noncondominium parcel of land. A unit that is not
27 specifically described by a lower limiting elevation boundary with reference
28 to established datum shall be deemed to include so much of the land and air
29 below the unit as would be attributed to a noncondominium parcel of land
30 under the common or statutory law applicable to such noncondominium parcel
31 of land.

32"

33 **SECTION 1.(b)** G.S. 47C-2-101 reads as rewritten:

34 **"§ 47C-2-101. Execution and recordation of declaration.**

35 ...



* S 3 3 6 - P C S 1 5 3 3 9 - M V - 2 *

1 (b) A declaration or an amendment to a declaration adding units to a condominium ~~must~~
2 ~~contain a certificate executed by~~ may not be recorded unless all structural components and
3 mechanical systems of all buildings containing or comprising any units thereby created are
4 substantially completed in accordance with building design plans of an architect licensed under
5 the provisions of Chapter 83A of the General Statutes or an engineer registered under the
6 provisions of Chapter 89C of the General Statutes stating that the plans for such building or
7 buildings fully and accurately depict the structural components and mechanical systems of all
8 buildings containing or comprising any units thereby created; Statutes, as evidenced by a
9 recorded certificate of completion executed by the architect or engineer; provided, however, that
10 (i) such requirement shall not apply to any unit or portion of a unit, the boundaries of which
11 comprise solely surface space, airspace, subterranean space, or any specified combination
12 thereof, as provided in G.S. 47C-2-105(a)(5); G.S. 47C-2-105(a)(5) and (ii) nothing in this
13 subsection shall require that the structural components and mechanical systems of buildings be
14 depicted on the plats or plans described in G.S. 47C-2-109(b)(6)."

15 **SECTION 1.(c)** This section is effective when it becomes law and applies to
16 declarations executed and recorded on or after that date.

17 18 **PART II. CONDOMINIUM ACT APPLICABILITY**

19 **SECTION 2.(a)** G.S. 47C-1-102(a) reads as rewritten:

20 "(a) This Chapter applies to all condominiums created within this State after October 1,
21 1986. In addition, the following sections apply to all condominiums created in this State on or
22 before October 1, 1986, notwithstanding any conflicting provisions in the articles of
23 incorporation, the declaration, or the bylaws and notwithstanding any references in those
24 documents to Chapter 47A of the General Statutes: G.S. 47C-1-105 (Separate Titles and
25 Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes),
26 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and
27 Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of
28 Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners'
29 Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for
30 finances and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111
31 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements),
32 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and
33 State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action;
34 Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of
35 those sections, apply to all condominiums created in this State on or before October 1, 1986,
36 unless the declaration expressly provides to the contrary. Those Fees). These sections apply only
37 with respect to events and circumstances occurring after October 1, 1986, and do not invalidate
38 existing provisions of the declarations, bylaws, or plats or plans of those condominiums. 1986.
39 G.S. 47C-1-103 (Definitions) also applies to all condominiums created in this State on or before
40 October 1, 1986, to the extent necessary in construing any of the sections referenced in this
41 subsection."

42 **SECTION 2.(b)** G.S. 47A-2 reads as rewritten:

43 **"§ 47A-2. Declaration creating unit ownership; recordation.**

44 Unit ownership may be created by an owner or the co-owners of a building by an express
45 declaration of their intention to submit such property to the provisions of the Article, which
46 declaration shall be recorded in the office of the register of deeds of the county in which the
47 property is situated. Notwithstanding the formation of a condominium by a declaration pursuant
48 to this section and specifically referencing this Chapter, those provisions of Chapter 47C of the
49 General Statutes that are made applicable to condominiums formed on or before October 1, 1986,
50 pursuant to G.S. 47C-1-102 shall apply and are not in conflict with this Chapter."
51

PART III. RESTITUTION FOR SEXUAL EXPLOITATION OF A MINOR

SECTION 3.(a) Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-190.17B. Restitution for sexual exploitation of a minor.

(a) In addition to any other civil or criminal penalty authorized by law, the court shall order restitution for a violation of G.S. 14-190.16, 14-190.17, or 14-190.17A, as required by Article 81C of Chapter 15A of the General Statutes and this section. Any defendant who viewed child pornography and has been convicted of G.S. 14-190.16, 14-190.17, or 14-190.17A shall be ordered to make restitution, as determined in accordance with this section.

(b) The court shall determine the full amount of the victim's losses for costs incurred as a proximate result of the offense. For the purposes of this section, the term "full amount of the victim's losses" includes, in addition to any applicable injuries and damages described in G.S. 15A-1340.35, the following:

(1) Medical services relating to physical, psychiatric, or psychological care.

(2) Physical and occupational therapy or rehabilitation.

(3) Transportation, temporary housing, and child care expenses.

(4) Loss of income.

(5) Reasonable attorneys' fees and other litigation costs associated with the order of restitution or its enforcement.

(6) Any other relevant losses incurred by the victim.

(c) If more than one defendant contributed to the losses of the victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution of each defendant to the victim's losses. A victim's total aggregate recovery shall not exceed the full amount of the victim's losses, as determined by the court. A defendant may petition the court to amend a restitution order upon a showing that the victim has received restitution in the full amount of the victim's determined losses.

(d) Where it is impossible to trace a particular amount of the determined losses to the defendant, the court shall order restitution in an amount that, in the court's discretion, reflects the defendant's relative role in the causal process that underlies the victim's full amount of loss.

(e) The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(f) Notwithstanding any other provision of this section, the court is not required to order restitution for a violation of G.S. 14-190.16, 14-190.17, or 14-190.17A if the victim has not been identified.

(g) In case of any conflict between Article 81C of Chapter 15A of the General Statutes and this section, this section prevails."

SECTION 3.(b) This section becomes effective December 1, 2021, and applies to orders for restitution entered on or after that date.

PART IV. MARKETABLE TITLE ACT EXEMPTIONS

SECTION 4.(a) G.S. 47B-3 reads as rewritten:

"§ 47B-3. Exceptions.

Such marketable record title shall not affect or extinguish the following rights:

...

(14) Notwithstanding anything in this section to the contrary, provisions contained in any declaration of covenants that are applicable to any of the following:

a. A condominium created under Chapter 47A or 47C of the General Statutes of North Carolina.

b. A cooperative as defined in G.S. 47F-1-103(8).

1 c. A planned community, other than a planned community in which all
2 lots are restricted exclusively to nonresidential purposes, whenever
3 created, to which any of the provisions of Chapter 47F of the General
4 Statutes of North Carolina apply; provided, however, that if such
5 planned community was created prior to January 1, 1999, this
6 exemption shall not apply unless it is governed by an owners'
7 association in existence as of November 1, 2021."

8 **SECTION 4.(b)** This section becomes effective November 1, 2021.

9
10 **PART V. EFFECTIVE DATE**

11 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
12 law.