

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 278
PROPOSED HOUSE COMMITTEE SUBSTITUTE S278-PCS45534-TG-44

Short Title: Prop./Fam. Law-Reimburse Prop. Expenditures.

(Public)

Sponsors:

Referred to:

March 15, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM THE STATUTE RELATING TO REIMBURSEMENT FOR
3 EXPENDITURES MADE BY SPOUSES ON JOINT PROPERTY WITH CURRENT
4 FAMILY LAW PRACTICE, AS RECOMMENDED BY THE FAMILY LAW SECTION
5 OF THE NORTH CAROLINA BAR ASSOCIATION, TO REQUIRE CERTAIN
6 INFORMATION TO BE INCLUDED IN DECLARATIONS FOR CONDOMINIUMS
7 PRIOR TO RECORDATION, TO CLARIFY THE APPLICABILITY OF THE NORTH
8 CAROLINA CONDOMINIUM ACT, AND TO CLARIFY EXEMPTIONS FROM THE
9 MARKETABLE TITLE ACT.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 41-61 reads as rewritten:

12 "**§ 41-61. Reimbursement for expenditures made on entireties property.**

13 (a) ~~Neither spouse holding property as tenants by the entirety is entitled to reimbursement~~
14 ~~of expenditures made on the property, including payments on indebtedness encumbering the~~
15 ~~property, while the tenancy by the entirety exists.~~In the case of property held as tenants by the
16 entirety, neither spouse is entitled to reimbursement from the other for expenditures made with
17 respect to the property during the existence of the tenancy by the entirety, including payments
18 made for recurring expenses, improvements, and payments made on indebtedness secured by a
19 lien on the property.

20 (b) When the tenancy by the entirety is converted to a tenancy in common by absolute
21 divorce or otherwise, responsibility for expenditures ~~for~~made with respect to the property held
22 as tenants in common is allocated as provided by the law governing tenants in common, unless
23 otherwise directed in a court order such as in an equitable distribution proceeding common.

24 (c) When the tenancy by the entirety is terminated by death, neither the surviving spouse
25 nor the personal representative of the deceased spouse is entitled to reimbursement from the other
26 for expenditures made with respect to the property during the existence of the tenancy by the
27 entirety, including payments made for recurring expenses, improvements, and payments made
28 on indebtedness secured by a lien on the property.

29 (d) Nothing in subsection (a), (b), or (c) of this section does any of the following:

30 (1) Applies in any proceeding for equitable distribution or constitutes any
31 limitation on the power of the court in any equitable distribution proceeding.

32 (2) Renders unenforceable the terms of any otherwise valid and enforceable
33 provisions in a premarital agreement, postmarital agreement, or promissory
34 note given by one spouse to the other.

35 (3) Affects any otherwise valid and enforceable lien or judgment."

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



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1 **"§ 47C-2-105. Contents of declaration.**

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

3 ...

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

21"

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

23 **"§ 47C-2-101. Execution and recordation of declaration.**

24 ...

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

39 **SECTION 2.(c)** This section is effective when it becomes law and applies to
40 declarations executed and recorded on or after that date.

41 **SECTION 3.(a)** G.S. 47C-1-102(a) reads as rewritten:

42 "(a) This Chapter applies to all condominiums created within this State after October 1,
43 1986. In addition, the following sections apply to all condominiums created in this State on or
44 before October 1, 1986, notwithstanding any conflicting provisions in the articles of
45 incorporation, the declaration, or the bylaws and notwithstanding any references in those
46 documents to Chapter 47A of the General Statutes: G.S. 47C-1-105 (Separate Titles and
47 Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes),
48 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and
49 Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of
50 Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners'
51 Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for

1 fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111
2 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements),
3 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-121 (American and
4 State flags and political sign displays), and 47C-4-117 (Effect of Violation on Rights of Action;
5 Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of
6 those sections, apply to all condominiums created in this State on or before October 1, 1986,
7 unless the declaration expressly provides to the contrary. Those Fees). These sections apply only
8 with respect to events and circumstances occurring after October 1, 1986, and do not invalidate
9 existing provisions of the declarations, bylaws, or plats or plans of those condominiums. 1986.
10 G.S. 47C-1-103 (Definitions) also applies to all condominiums created in this State on or before
11 October 1, 1986, to the extent necessary in construing any of the sections referenced in this
12 subsection."

13 **SECTION 3.(b)** G.S. 47A-2 reads as rewritten:

14 "**§ 47A-2. Declaration creating unit ownership; recordation.**

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

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

23 "**§ 47B-3. Exceptions.**

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

25 ...

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

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

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

31 c. A planned community, other than a planned community in which all
32 lots are restricted exclusively to nonresidential purposes, whenever
33 created, to which any of the provisions of Chapter 47F of the General
34 Statutes of North Carolina apply; provided, however, that if such
35 planned community was created prior to January 1, 1999, this
36 exemption shall not apply unless it is governed by an owners'
37 association in existence as of July 1, 2022."

38 **SECTION 4.(b)** This section becomes effective July 1, 2022.

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

40 law.