

Presentation of Hear4nc:

The proper procedure for requiring a developer of a planned community to make a proper disclosure when offering real estate for sale to the public in a planned community is by requiring the developer to make a public offering statement.

The law and proper and required procedure for public offering statements for common interest communities already exists in North Carolina; it must be applied to the NC Planned Community Act.

North Carolina real estate law requires public offering statements for condominiums, see **G.S. 47C, The NC Condominium Act (1986)** and time shares, see **G.S. 93A-39, The NC Time Share Act (1983)**.

(**NOTE:** Times shares are registered and under the control of the NC Real Estate Commission, and Time shares must also follow §47C-4-105 if it is in a condominium.)

It is the request of Hear4nc that it should be recommended to the General Assembly that **G.S. 47F, The NC Planned Community** should be amended to add the following:

- I. **Article 4 - Protection of purchasers**, similar to that which is presently set forth in **Article 4 of G.S. 47C, The NC Condominium Act**; (See Appendices “A” and “B”);
- II. **Amend G.S. 47C and G.S. 47F** to give the control over the common interest communities to the NC Real Estate Commission by adding **Article 5 - Administration and Registration of Common Interest Communities**. (See Appendix “D” for table of contents for Article 5.) The NC Real Estate commission should have the same control over the real estate of common interest communities that it has over the time shares and the disclosure pertaining to private sale real estate;
- III. **Amend §47C-4-109 and 47F-4-109 (Resales of units)** to read as set forth in the Uniform Common Interest Ownership Act (2008) (see Appendix “C”), and include a statement that the unit/lot owner must also provide a disclosure statement as set forth in G,S, 47E as amended; and
- IV. **Amend G.S. 47E. Required disclosures** by repealing or editing the following: (1) **Section 47E-2(b)(3)** delete reference to “or an owner’s association and mandatory covenant disclosure statement” and (2) delete **Section 47E-4(b1)** in its entirety, and amend **Section 47E-5. Time for**

Disclosure; cancellation of contract, by incorporating or referring to the relevant sections of the 47C and 47F and the Time Shares Act pertaining to time for delivery of documents and cancellation.

GENERAL OBSERVATIONS

Other states that have adopted the Common Interest Ownership Act and require public offering statements for planned communities under **Article 4 - Protection of Purchasers of the Uniform Act** are:

Pennsylvania, West Virginia, Delaware, New Mexico, Connecticut, Nevada, New Jersey, Vermont, Hawaii, Minnesota, Alaska, Tennessee (2015), California [Davis-Stirling Act]. There may be others.

It should be noted that the NC Real Estate Commission already has substantial control over the time shares (G.S. 93A-54), and time shares are required to be registered with the NC Real Estate Commission (see G.S. 93A-40), and the NC Real Estate Commission makes the rules for disclosure of real estate for sale (G.S. 47E).

Comment from the Uniform Common Interest Ownership Act:

“The best “consumer protection” that the law can provide to any purchaser is to insure that he has an opportunity to acquire an understanding of the nature of the products which he is purchasing. Such a result is difficult to achieve, however, in the case of the common interest community purchaser because of the complex nature of the bundle of rights and obligations which each unit owner obtains. For this reason, the Act, adopting the approach of many so-called “second generation” condominium statutes, sets forth a lengthy list of information which must be provided to each purchaser before he contracts for a unit. This list includes a number of important matters not typically required in public offering statements under existing law. The requirement for providing the public offering statement appears in Section 4-102(c), and Section 4-108 provides purchasers with cancellation rights and imposes civil penalties upon declarants not complying with the public offering statement requirements of the Act.” Uniform Common Interest Ownership Act (2008), Comment to §4-103 p. 224 to p. 225.

At the present time the developer of a NC Planned Community is not required to make any disclosure whatsoever, nor make any commitments as to whether or not there will be any common area, does not indicate the potential cost of maintenance of common areas, nor a specific description of the developer's rights, if any. A substantial portion of the obligations and duties of a developer has been omitted from the Act.

The following is a list of sections and titles that were **omitted** from G.S. 47F (some of the sections that have been adopted have been substantially changed):

- §47F-2-104. Description of units.
- §47F-2-105. Contents of declaration.
- §47F-2-106. Leasehold common interest communities.
- §47F-2-107. Allocation of allocated interests.
- §47F-2-108. Limited common elements.
- §47F-2-109. Plats and plans.
- §47F-2-110. Exercise of development rights.
- §47F-2-111. Alteration of units.
- §47F-2-112. Relocation of unit boundaries.
- §47F-2-113. Subdivision of units.
- §47F-2-114. Easements for encroachments.
- §47F-2-115. Use of sales purposes.
- §47F-2-116. Easement and use rights.

Chapter 47E - North Carolina Residential Property Disclosure Act.

This Act applies to the characteristics and condition of the physical property that is being resold and has been inhabited. It does not and can not describe the obligation of a developer of a planned community nor the rights and duties of a potential purchaser.

“Common interest community” means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration.

What is the developer selling? What is not being sold? What is the common area? How much will the assessment be in the future? Who will pay for construction of the amenities, if any?

How many potential purchasers realize that if they purchase property in an association, that they will have to give the association a “security interest” in their property in the event they fail to pay the required assessment?

The sale of property by the developer in an association involves more than just the property; it also involves the common area and obligations of both the buyer and developer.

The resale of the property to a potential purchaser of real estate in a common interest community requires information not only about the covenants of the property being purchased, but also about the association and obligations that the buyer is undertaking with regard to the common area and the association. The information concerning the association’s legal and financial status should be provided by the association for accuracy and accountability. The finances and condition of the association should be certified by the association on the matters set forth in Section 4-109. If the information is wrong the buyer would have recourse against the association rather than the seller. The seller could be long gone. One of the biggest problems for members is to get information from the executive board.

~~~~~APPENDIX~~~~~

Set forth below are sections of the present NC Condominium Act for discussion, if necessary, that pertain to the requirements and contents of a Public Offering Statement that is presently required for North Carolina condominiums. It is only a matter of copying Article 4 and adding it to 47F with minor corrections to indicate it applies to the planned community.

NOTE:

Comments to **Article 4, Section 4-101. Applicability; waiver**, of the UCIOA, p.219. “...(N)o express waiver of the protections of this article with respect to the purchasers of residential units is permitted by this subsection . Accordingly, by operation of Section 1-104, the rights provided by this article may not be waived in the case of residential purchasers.”

**Appendix “A”**

**§ 47C-4-103. Public offering statement; general provisions.**

- (a) A public offering statement must contain or fully and accurately disclose:

- (1) The name and principal address of the declarant and of the condominium;
- (2) A general description of the condominium, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings and amenities which declarant anticipates including as part of the condominium;
- (3) The number of units in the condominium;
- (4) Copies of the recorded or proposed declaration (other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and copies of or a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under G.S. 47C-3-105;
- (5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:
  - a. A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
  - b. A statement of any other reserves;
  - c. The projected common expense assessment by category of expenditures for the association; and
  - d. The projected monthly common expense assessment for each type of unit;
- (6) Any services that the declarant provides or expenses that he pays which are not reflected in the budget and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
- (7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (8) A description of any known or recorded liens, encumbrances or defects affecting the title to the condominium;
- (9) The terms and limitations of any warranties provided by the

declarant;

(10) A statement that the purchaser must receive a public offering statement before signing a contract for purchase and that no conveyance can occur until seven calendar days following the signing of a contract for purchase; and that the purchaser has the absolute right to cancel the contract during the seven calendar days period;

(11) A statement of any known or recorded unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

(12) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account pursuant to G.S. 47C-4-108, together with the name and address of the escrow agent;

(13) Any restraints on alienation of any portion of the condominium;

(14) A description of the insurance coverage provided for the benefit of unit owners;

(15) Any current or known future fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;

(16) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to G.S. 47C-4-119;

(17) A brief narrative description of any existing zoning and otherland use requirements governing the condominium; and

(18) A statement that any common element may be alienated or conveyed in accordance with G.S. 47C-3-112.

(b) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section and provide a copy of any such material changes to any purchaser who has executed a contract. If any material change is made in a proposed declaration after a contract for purchase of a unit has been signed but before conveyance, the purchaser may rescind the contract within seven days after receipt of the notice of the change. (1985 (Reg. Sess., 1986), c. 877, s. 1; 1997-456, s. 27.)

## **APPENDIX "B"**

**§ 47C-4-104. Same; condominiums subject to developmental rights.**

If the declaration provides that a condominium is subject to any development rights reserved by the declarant, the public offering statement shall disclose, in addition to the information required by G.S. 47C-4-103:

- (1) The maximum number of units, and the maximum number of units per acre, that may be created;
- (2) How many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use;
- (4) A brief narrative description of any development rights and of any conditions relating to or limitations upon the exercise of development rights;
- (5) The maximum extent to which each unit's allocated interests may be changed by the exercise of any development right;
- (6) The extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (8) Any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right, or a statement that no assurances are made in that regard;
- (9) A statement that any limited common elements created pursuant to any development right will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;
- (10) A statement that the proportion of limited common elements to units created pursuant to any development right will be approximately

equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant. (1985 (Reg. Sess., 1986), c. 877, s. 1.)

## **APPENDIX “C”**

Copied directly from the Uniform Common Interest Ownership Act (2008)

### **SECTION 4-109. REALES OF UNITS.**

- (a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under Section 4-101(b), a unit owner shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association, and a certificate containing:
- (1) a statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;
  - (2) a statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
  - (3) a statement of any other fees payable by the owner of the unit being sold;
  - (4) a statement of any capital expenditures approved by the association for the current and succeeding fiscal years;
  - (5) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
  - (6) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
  - (7) the current operating budget of the association;
  - (8) a statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
  - (9) a statement describing any insurance coverage provided for the benefit of unit

owners;

- (10) a statement as to whether the executive board has given or received notice in a record that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
  - (11) a statement as to whether the executive board has received notice in a record from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community which has not been cured;
  - (12) a statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;
  - (13) a statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community;
  - (14) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;
  - (15) a statement describing any pending sale or encumbrance of common elements; and
  - (16) a statement disclosing the effect on the unit to be conveyed of any restrictions on the owner's right to use or occupy the unit or to lease the unit to another person.
- (b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.
- (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for [five] days thereafter or until conveyance, whichever first occurs.

## **APPENDIX "D"**

### **Article 5 - Administration and Registration of Common Interest Communities**

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Respectfully submitted,